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Legal Analysis of Domestic Violence Based on the Mazhab Syafi'i and Indonesian Positive Law

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Abstract

This research aims to examine how standards for handling domestic violence can be formed by considering the views of the Shafi'i Mazhab and positive law in Indonesia.

The method of research used is normative legal research using the statutory approach method and conceptual approach method.

The novelty in this research compared to previous research lies in the dual approach used in analyzing cases of domestic violence, namely through the perspective of the Shafi'i Mazhab and Indonesian positive law.

The results show that both Indonesian positive law and the Shafi'i Mazhab consider domestic violence as an act that is contrary to the principles of justice and welfare in the family. However, there are differences in their perspective and legal implementation.

The conclusion in Syafi'i's view, domestic violence is associated with the concept of nusyûz, which allows husbands to discipline their wives within strict limits, but this approach is no longer considered relevant in the modern era that rejects all forms of physical violence. Meanwhile, Law No. 23/2004 on the Elimination of Domestic Violence provides comprehensive protection against various forms of domestic violence, although it still faces implementation challenges such as weak law enforcement, patriarchal culture, and social stigma. Therefore, a renewal of the understanding of Islamic law is needed.

Keywords: Domestic Violence; Shafi'i Mazhab; Positive Law.

Abstrak

Penelitian ini bertujuan untuk mengkaji bagaimana standar penanganan KDRT dapat dibentuk dengan mempertimbangkan pandangan Mazhab Syafi'i serta hukum positif di Indonesia.

Metode Penelitian yang digunakan yakni penelitian hukum normatif dengan menggunakan metode pendekatan perundang-undangan dan metode pendekatan konseptual.

Kebaruhan dalam penelitian ini dibandingkan dengan penelitian sebelumnya terletak pada pendekatan ganda yang digunakan dalam menganalisis kasus Kekerasan Dalam Rumah Tangga (KDRT), yakni melalui perspektif Mazhab Syafi'i dan hukum positif Indonesia.

Penelitian menunjukkan bahwa baik hukum positif Indonesia maupun Mazhab Syafi'i menganggap KDRT sebagai tindakan yang bertentangan dengan prinsip keadilan dan kesejahteraan dalam keluarga. Namun, terdapat perbedaan dalam cara pandang dan implementasi hukumnya.

kesimpulan dalam pandangan Syafi'i, KDRT dikaitkan dengan konsep nusyûz, yang

memungkinkan suami mendisiplinkan istri dalam batasan ketat, namun pendekatan ini dianggap tidak lagi relevan di era modern yang menolak segala bentuk kekerasan fisik. Sementara itu, Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan KDRT memberikan perlindungan komprehensif terhadap berbagai bentuk kekerasan domestik, meski masih menghadapi tantangan implementasi seperti lemahnya penegakan hukum, budaya patriarki, dan stigma sosial. Oleh karena itu, dibutuhkan pembaruan terhadap pemahaman hukum Islam.

Kata Kunci: Kekerasan dalam Rumah Tangga; Mazhab Syafi'i; Hukum Positif.

1. INTRODUCTION

Human life is inseparable from the existence of the family. The family, consisting of husband, wife, and children, is equal in the eyes of the law, although each member has different duties and roles.¹ Living a family life is not always easy because every family must face challenges. Mutual understanding and togetherness in the family are very important so that every problem can be resolved according to expectations.²

One of the persistent challenges faced by families is domestic violence (DV), which continues to be a serious issue in many households. Numerous homes, instead of being safe and nurturing environments, have become spaces of suffering and abuse, particularly for wives. Various factors contribute to the occurrence of domestic violence, including physical, psychological, sexual, and economic abuse, which not only harm the victims but also disrupt the overall well-being of the family unit.³ Each year, the incidence of domestic violence (DV) continues to escalate, with women and children being the most at risk. According to data from the Ministry of Women's Empowerment and Child Protection (KPPPA), although the numbers may fluctuate, the overall trend indicates a consistent rise in cases of violence against women and children.

Domestic violence is not just a concern in Indonesia but a widespread global issue that demands serious attention due to its far-reaching impact on victims, families, and society as a whole. It includes various forms of abuse physical, psychological, sexual, and economic which are typically inflicted by one family member upon another, disrupting household harmony and causing long term consequences for those affected.⁴

As the country with the largest Muslim population in the world, Indonesia integrates Islamic principles and positive law into its legal framework.⁵ This integration is not merely a

¹ Muhammad Quraish Shihab, *Pengantin Alquran: 8 Nasehat Perkawinan Untuk Anak-Anakku* (Tangerang: Lentera Hati, 2015).

² Edwin Manumpahi Shirley Y.V.I. Goni Hendrik W., "KAJIAN KEKERASAN DALAM RUMAH TANGGA TERHADAP PSIKOLOGI ANAK DI DESA SOAKONORA KECAMATAN JAILOLO KABUPATEN HALMAHERA BARAT," *E-Journal "Acta Diurna* 1, no. 5–6 (2016): 2772–90, <https://doi.org/10.1177/0886260518759060>.

³ Iskandar, "Analisis Keharmonisan Rumah Tangga Yang Menikah Sebelum Dan Sesudah Berlaku Undang-Undang Perkawinan Nomor Tahun 1974 (Studi Kasus Pada Masyarakat Desa Marga Agung Kecamatan Jati Agung Kabupaten Lampung Selatan)," in *Doctoral Dissertation* (Lampung: Universitas Islam Negeri Raden Intan., 2018).

⁴ Naufal Hibrizi Setiawan et al., "Pemahaman Dan Faktor – Faktor Penyebab Kekerasan Dalam Rumah Tangga: Tinjauan Literatur," *Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 3, no. 2 (2023): 1–6, <https://jurnal.anfa.co.id/index.php/civilia/article/view/448>.

⁵ Delisya Fransiska Simamora et al., "Peran Hukum Islam Dalam Pembangunan Hukum Nasional," *Capitalis: Journal Of Social Sciences* 1, no. 1 (2023): 4287–88.

compromise between religious values and formal legal provisions but also reflects an effort to harmonize religious norms with the needs of modern society. This can be seen in various national legal products that accommodate Islamic values, particularly in family law, inheritance law, and the protection of women and children. One aspect significantly influenced by this integration is the regulation and handling of domestic violence (DV). The handling of DV is not only viewed as a criminal law issue but also as a moral and social issue that must be resolved with a just legal approach, while considering the religious values that are alive in society.

The legal framework in Indonesia encompasses two main foundations: positive law and Islamic values. Positive law is regulated by national legislation, such as Laws, Government Regulations, and Regional Regulations, which are formulated based on constitutional principles and the rule of law.⁶ On the other hand, Islamic values play a significant role, particularly in the areas of family law, civil law, and the social morals of society. Islam, as the majority religion in Indonesia, has a rich intellectual heritage derived from various schools of thought, with the Mazhab Shafi'i being the most dominant, especially in regions such as Java, Madura, and Sumatra. This Mazhab of thought not only influences the daily religious practices of Muslims but also serves as a reference in the formulation of legal policies related to family and social life. The views of the Mazhab Shafi'i are often used as the basis for religious fatwas and policy recommendations by official Islamic institutions such as the Indonesian Ulama Council (MUI) and the Religious Courts.

The Mazhab Shafi'i plays an important role in shaping the understanding of Indonesian Muslim society towards Islamic teachings, including social issues such as domestic violence (DV). The teachings of this school emphasize the importance of justice, responsibility within the family, and protection for vulnerable family members.⁷ In practice, the views of the Mazhab Shafi'i often serve as a reference in the resolution of DV cases through a religious approach, whether by religious leaders, Islamic institutions, or in family counseling forums. Therefore, an understanding of this Mazhab of thought becomes relevant in formulating policies and strategies for handling DV that are contextualized with local values.

Domestic violence transcends geographic, economic, and social boundaries and can occur across all strata of society, whether in poor or wealthy families or urban or rural areas. DV often involves the abuse of power in a relationship that should be based on love and mutual respect.⁸

⁶ Adrie S.Sos, SH.MH and I Ketut Suardita, "Konsistensi Pembentukan Peraturan Daerah Berdasarkan Hierarki Perundang-Undangan Dalam Perspektif Hukum Kepegawaian," *Jurnal Yustitia* 18, no. 1 (2024): 64–80, <https://doi.org/10.62279/yustitia.v18i1.1196>.

⁷ Mohammad Sahli Ali et al., "Mubadalah : Metode Interpretasi Adil Gender Bagi Hakim Pengadilan Agama Dalam Memutus Sengketa Hukum Keluarga Mubadalah: Methods of Gender Justice Interpretation for Religious Court Judges in Deciding Family Law Concerns" 1, no. 2 (2024): 137–58.

⁸ Abdul Kadir, "Jurnal Hukum Islam," *Jurnal Hukum Islam. Vol: 12, No: 02, November – 2023*, no. November (2023): 103–29, <https://doi.org/DOI:https://doi.org/10.38073/rasikh.v12i2.1636>.

Table 1. Domestic Violence (KDRT) Statistics Data in Indonesia

Data Source	Year	Total Cases	Percentage of Violence Types	Victim Demographics
Ministry of Women's Empowerment and Child Protection (KPPPA)	2022	10,247	Physical (40%), Psychological (30%), Sexual (20%), Economic (10%)	Women (75%), Men and Children (25%)
National Commission on Violence Against Women (Komnas Perempuan)	2023	11,000+	Sexual violence increased by 15% from the previous year	90% of victims are women
Indonesian National Police (Polri)	2023	12,600	Physical (50%), Psychological (25%), Sexual (15%), Economic (10%)	Majority are women (80%), children (15%), men (5%)
Legal Aid Foundation for Women and Children (LBH APIK)	2021	1,178	Physical (65%), Psychological (20%), Sexual (15%)	60% of cases go unreported

Source: National Statistics Agency 2023

Statistical data indicate that domestic violence (DV) remains a serious and widespread issue in Indonesia, with incidents reported across diverse regions, socioeconomic levels, and cultural backgrounds. While both women and men can fall victim to domestic abuse, national and international studies consistently show that women constitute the overwhelming majority of victims. According to the 2023 Annual Report by Komnas Perempuan, thousands of cases of violence against wives were recorded, underscoring the gendered nature of DV in the country. These acts of violence include not only physical abuse, but also psychological, sexual, and economic harm each leaving long-term effects on the victim's health and well-being. Despite the enactment of protective legislation such as the 2004 Domestic Violence Law, underreporting remains a major challenge due to stigma, fear of retaliation, economic dependence, and insufficient institutional support. As such, addressing DV in Indonesia requires not only legal enforcement but also public education, survivor support systems, and stronger coordination among government and civil society actors.

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Indonesia's positive law recognizes the significance of protecting domestic violence (DV) victims. Law No. 23 of 2004 on the Elimination of Domestic Violence serves as a fundamental legal framework aimed at preventing and addressing DV, ensuring protection for victims while enforcing sanctions on perpetrators to uphold justice and accountability.

In Islam, DV is considered a major sin, especially in the Mazhab Shafi'i, which strongly opposes violence as it contradicts the principles of justice, compassion, and respect in human relationships. Islam views the household as a unit that must be preserved in harmony.⁹

Although Indonesia's positive law has established regulations for handling domestic violence (DV) cases, a gap often exists between legal provisions and religious perspectives, particularly in the interpretation and implementation of these laws. This disparity highlights the need for a comprehensive understanding of both legal and religious viewpoints, allowing for the identification of differences and similarities to promote a more harmonious and effective approach in addressing domestic violence.¹⁰

Protection and justice for victims of domestic violence are crucial aspects in resolving this issue, covering not only legal aspects but also social, economic, and psychological support. Collaboration between various institutions, including legal and religious bodies, is essential to enhance protection and justice for victims.

The first study was conducted by Asap Ubaidillah under the title Comparative Study of Domestic Violence Law in Islamic Jurisprudence and Indonesian Positive Law. This research

⁹ Ali Mutakin et al., "Kekerasan Dalam Rumah Tangga (KDRT) Dalam Pernikahan Dini Perspektif Teori Maqashid Syari'ah," *Tasyri': Journal of Islamic Law* 2, no. 1 (2023): 175–205, <https://doi.org/10.53038/tsyr.v2i1.74>.

¹⁰ D S N Rohmah and K Anwar, "Problematika Kekerasan Seksual Dalam Rumah Tangga (Marital Rape) Perspektif Undang-Undang Berbasis Maqasid Al-Shariah," *Jurnal Pendidikan Tambusai* 7 (2023): 18828–40, <https://www.jptam.org/index.php/jptam/article/view/9370%0Ahttps://www.jptam.org/index.php/jptam/article/download/9370/7642%0Ahttps://doi.org/10.31004/jptam.v7i2.9370>.

examines the comparison between the concept of domestic violence (DV) in classical Islamic jurisprudence, particularly in the Mazhab Shafi'i of thought, and the provisions of positive law in Indonesia as stipulated in Law No. 23 of 2004 on the Elimination of Domestic Violence. The study found that there are differences in the approach to defining DV, where classical fiqh tends to view it as part of the rights and responsibilities between husband and wife, while positive law emphasizes protection for victims, particularly women.¹¹

The second study, titled Domestic Violence in the Perspective of Islamic Law and Human Rights: An Indonesian Context, was conducted by Fatimah Zahra and Ahmad Fauzi. This research discusses DV from three perspectives: human rights (HR), Islamic law, and Indonesian positive law. In the discussion, the Mazhab Shafi'i of thought serves as the primary reference in the analysis of Islamic law, considering that the majority of Indonesians follow this Mazhab. The study highlights the challenges of harmonizing classical fiqh provisions, which sometimes contain conservative views on marital relations, with the human rights protection principles accommodated in national law.¹²

The third relevant study was conducted by M. Ridwan with the title Legal Protection for Victims of Domestic Violence: Analysis from the Perspective of Islamic Law and Positive Law in Indonesia. This research focuses on legal protection for DV victims according to both the Mazhab Shafi'i of thought and Indonesian positive law. It also explores the views of Shafi'i scholars on punishments for perpetrators of domestic violence. The findings indicate that while Shafi'i fiqh recognizes a husband's right to educate his wife, actions that lead to excessive physical violence are still considered violations of Islamic law.¹³

The fourth study was conducted by Nur Hidayah, titled The Role of Islamic Jurisprudence in Addressing Domestic Violence: Focus on the Mazhab Shafi'i of Thought. This research specifically examines how the Mazhab Shafi'i of thought perceives the issue of DV and how these teachings are understood and practiced by Indonesian Muslim communities. Additionally, it compares the perspectives of the Mazhab Shafi'i with Indonesian positive law. The study emphasizes the need for a reinterpretation of classical fiqh teachings to better align with gender justice principles as regulated in national law.¹⁴

The primary strength of this research compared to previous studies lies in its dual approach in analyzing cases of Domestic Violence (KDRT), namely through the perspectives of the Mazhab Shafi'i of thought and Indonesia's positive legal system. This study not only provides a descriptive overview but also critically evaluates the points of convergence and divergence between Islamic legal principles and national legislation, particularly Law Number

¹¹ Asep Ubaidillah, "Konsekuensi Hukum Kekerasan Dalam Rumah Tangga Terhadap Tingkat Perceraian: Perspektif Hukum Islam Dan Positif," *Qonuni: Jurnal Hukum Dan Pengkajian Islam* 3, no. 01 (2023): 21–29, <https://doi.org/10.59833/qonuni.v3i01.1163>.

¹² A. Zahra, F., & Fauzi, "Kekerasan Dalam Rumah Tangga Dalam Perspektif Hukum Islam Dan Hak Asasi Manusia: Konteks Indonesia," *Jurnal Studi Hukum Keluarga Islam, IAIN Surakarta*, 2020.

¹³ M. Ridwan, "Perlindungan Hukum Bagi Korban Kekerasan Dalam Rumah Tangga: Analisis Perspektif Hukum Islam Dan Hukum Positif Di Indonesia," *Jurnal Ilmu Syariah Dan Hukum, UIN Sunan Kalijaga*, 2019.

¹⁴ N. Hidayah, "Peran Fikih Islam Dalam Menangani Kekerasan Dalam Rumah Tangga: Fokus Pada Mazhab Syafi'i," *Jurnal Studi Hukum Islam, UIN Malang*, 2018.

23 of 2004 concerning the Elimination of Domestic Violence. This approach offers added value by contributing meaningfully to the refinement of legal policies that are more comprehensive and socially contextualized. Another unique aspect of this research is its ability to contextualize the teachings of the Mazhab Shafi'i within the contemporary socio-cultural reality of Indonesian society. Thus, the study is not merely theoretical but also provides applicable solutions to current social issues.

This research aims to examine how standards for handling domestic violence can be established by considering both the Shafi'i perspective and Indonesia's positive law, particularly in terms of definitions of violence, response mechanisms, victim protection, and sanctions for perpetrators. By developing a comprehensive understanding of these two legal perspectives, the study is expected to contribute to more effective efforts in the prevention and handling of domestic violence. Moreover, it seeks to identify potential gaps between Islamic law and state law in order to find a more harmonious legal synthesis that aligns with Indonesia's social context. Furthermore, the findings of this research are expected to serve as practical recommendations for policymakers, law enforcement agencies, and social institutions in formulating policies that are fairer, more responsive, and victim oriented ultimately fostering the creation of safe and harmonious households free from violence.

2. METHOD

This study employs a qualitative approach using a descriptive-analytical method. The data sources consist of primary and secondary legal materials. Primary legal materials include Law Number 23 of 2004 concerning the Elimination of Domestic Violence and classical Shafi'i jurisprudence literature, such as fiqh books that discuss marital relationships and various forms of domestic violence from an Islamic legal perspective. Meanwhile, secondary legal materials include books, journals, scholarly articles, and previous research relevant to the topic.¹⁵ The data collection technique used is library research, which involves examining Islamic and Indonesian legal literature related to domestic violence. The collected data is then analyzed qualitatively using a comparative approach by comparing the views of the Shafi'i school with the provisions of Indonesia's positive law concerning definitions of violence, handling mechanisms, victim protection, and sanctions for perpetrators. The analysis is carried out in depth to identify areas of convergence, divergence, and the potential integration of Islamic legal values into national legal policy.

The content analysis used by the writer focuses on qualitative content analysis. Qualitative content analysis aims to explore in-depth meaning within texts (the hidden meaning in the text), in this case, an in-depth analysis of the views of the Mazhab Shafi'i and the perspective of positive law regarding the transfer of child custody under the age of majority when the mother is deemed mentally ill. The content analysis method employed in this research follows the qualitative content analysis model of Mayring. Finally, the researcher analyzes the works of Shafi'i scholars and the foundations of positive law to

¹⁵ Nurrohman Muhamad Soleh and Ganjar Eka Subakti, "THE CONCEPT AND HISTORICAL REALITY OF ISLAMIC" 15, no. 02 (2024).

compare the similarities and differences in the perspectives of the Shafi'i school and positive law on the standardization of domestic violence

3. DISCUSSION

3.1. The Shafi'i Madzhab Perspective on Domestic Violence

One of the Qur'anic verses often perceived as unsupportive of women's rights is Surah An-Nisâ' (4:34), which states that men are the protectors and maintainers of women and is frequently interpreted as permitting a husband to discipline his wife through physical means in cases of nusyûz (disobedience).¹⁶ This verse is often cited to justify patriarchal norms, reinforcing the idea that men hold authority over women, both in society and within the household structure.

In Tafsir al-Mîzan, it is explained that the terms rijâl (men) and nisa (women) in this verse do not refer to men and women in general but specifically to husbands and wives within the household context. The verse also addresses righteous wives who safeguard themselves in their husbands' absence, as well as the actions husbands may take when their wives commit nusyûz (disobedience). Thus, in this interpretation, the terms men and women in the verse are understood to pertain specifically to husbands and wives within their marital relationship.¹⁷

In accordance with this view, Asghar Ali Engineer explains that the verse in question pertains specifically to the domestic sphere.¹⁸ He maintains that although the Qur'an presents men as holding a superior position over women in a normative sense, this should not be interpreted as endorsing a fixed or static social hierarchy. Rather, social roles are fluid and subject to change over time. In situations where women are the main earners or work alongside men, they can achieve equal or even higher status, taking on leading roles within the family much like men have traditionally done.¹⁹

The permission to discipline mentioned in this verse can be better understood by examining the historical context of its revelation (asbâb al-nuzul). The verse was revealed following an incident in which a man injured his wife, prompting her brother to report the case to the Prophet Muhammad (SAW). In response, the Prophet initially ordered qishash (retribution) against the husband. According to a narration from Ibn Murdawayh, it is reported that a companion from the Ansar slapped his wife, leaving a visible mark. When the wife brought the matter before the Prophet, he forbade such actions. It was after this event that Surah An-Nisâ' (4:34) was revealed.²⁰

¹⁶ Makmur Jaya, "Penafsiran Surat An-Nisa' Ayat 34 Tentang Kepimpinan Dalam Al-Quran," *At-Tanzir: Jurnal Ilmiah Prodi Komunikasi Penyiaran Islam*, 2021, 248, <https://doi.org/10.47498/tanzir.v11i2.407>.

¹⁷ Napisah and Syahabudin, "Mahkamah: Jurnal Kajian Hukum Islam," *TELAAH MAKNA DHARABAH BAGI ISTRI NUSYUZ DALAM PERSPEKTIF GENDER Napisah*, 4, no. 1 (2019): 15.

¹⁸ Dzulfiqar Fauzan Nafis, "STUDI KOMPARATIF PEMIKIRAN ASGHAR ALI ENGINEER DAN BUYA HAMKA TENTANG POLIGAMI" 7 (2025): 1–18.

¹⁹ Mayola Andika, "REINTERPRETASI AYAT GENDER DALAM MEMAHAMI RELASI LAKI-LAKI DAN PEREMPUAN (Sebuah Kajian Kontekstual Dalam Penafsiran)," 2018, 6, <https://doi.org/DOI:https://doi.org/10.14421/musawa.2018.172.137-152>.

²⁰ Abd. Wahed, "Analisis Hukum Islâm Terhadap Masalah Kekerasan Dalam Rumah Tangga (Kdrt)," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 4, no. 1 (2013): 31–50, <https://doi.org/10.19105/al-lhkam.v4i1.261>.

Based on the *asbâb al-nuzul* mentioned above, it can be understood that this verse applies in the context of the household, and the permission for beating at that time aimed to nullify the Prophet Muhammad's *saw* decision regarding *qishash*. However, beating in this context should be interpreted as a measure to provide a lesson, not to harm the wife.

In the *Mazhab Shafi'i* of thought, *Nusyuz* generally refers to a wife's disobedience towards her husband, demonstrated by her failure to fulfill her obligations to him. However, *nusyuz* can also be defined as a husband's negligence in fulfilling his wife's rights. Acts of *nusyuz* by the husband include violence against the wife, whether verbal, such as insults, or physical, such as hitting, as well as neglecting financial or emotional support, or other rights that the wife is entitled to receive.

In *Syarh Al-Yaqut An-Nafis*, written by Muhammad bin Ahmad as-Syathiri (2017), it is explained that *nusyuz* can occur not only from the wife but also from the husband. A husband's *nusyuz* occurs when he neglects the obligatory rights of his wife, such as treating her well, equitable distribution, giving dowries, providing sustenance, proper clothing, and other needs. Scholars agree that if a husband fails to fulfill these rights, such as by not providing for the wife or acting unjustly, a *qadhi* (judge) has the authority to order the husband to fulfill his obligations if the wife files a complaint.

If a husband mistreats his wife and inflicts injuries upon her through unjustified physical violence, the *qadhi* will prohibit such actions. Should the husband repeat the offense and the wife seek punishment, the *qadhi* has the authority to impose *ta'zir* (a discretionary punishment) on the husband for his violation against his wife.²¹

In Islamic law, *nusyuz* is defined differently among various *Mazhab*. The *Mazhab Hanafi* define *nusyuz* as a wife's act of leaving her husband's house without a valid reason. Meanwhile, *Maliki*, *Shafi'i*, and *Hanbali* scholars define it as the wife's failure to fulfill her obligations to her husband. Some scholars argue that only wives can be guilty of *nusyuz*, while others believe it can also apply to husbands, although the term is more commonly used in relation to wives. According to Imam Syarqowi, *nusyuz* can arise from both husband and wife, although it is rarely used for the husband.²²

Nusyuz from the wife's side can be identified through two categories: action and speech. Indications of *nusyuz* in action include the wife turning away, having a sour face, or rejecting the husband's call, which is different from the usual gentle attitude and cheerful face. At the same time, *nusyuz* in speech is when the wife responds to her husband's words with harsh words, even though he usually speaks softly.²³

In the *Mazhab Shafi'i*, when a husband faces a wife committing *nusyuz*, the husband has the right to take certain steps prescribed by *Shari'ah* in stages, including *al-wa'dzh*

²¹ Adynata Adynata and Sulaiman Sulaiman, "Analisis Normalisasi Pemukulan Suami Terhadap Istri Perspektif Hukum Islam (Studi Terhadap Pendapat Seorang Da'iyah Di Media Sosial)," *An-Nida'* 46, no. 1 (2022): 65, <https://doi.org/10.24014/an-nida.v46i1.19244>.

²² Chadziqatun Nafi'ah Oming Ratna Wijaya, "NUSYUZ DALAM HUKUM ISLAM: ASPEK HUKUM DAN DAMPAKNYA PADA HUBUNGAN SUAMI-ISTRI," *MASADIR: Jurnal Hukum Islam* 4, no. 2 (2024), <https://doi.org/https://doi.org/10.33754/masadir.v4i01.1273>.

²³ Wahbah Az-Zuhaili, *Fiqih Islam Wa Adillatuhu* (Abdul Hayyie Al-Kattani, Trans) (Jakarta: Gema Insani., 2011).

(advice), al-hajr (separation in bed), and ad-dharb (beating). However, strict limitations are imposed when the husband chooses to hit. In the Shafi'i School, such hitting must not cause injury or harm to the wife. Some scholars explain that the blow must meet certain criteria, i.e., it should not cause bleeding (mudmin), injury (mubarrih), incapacitation (syain), or excessive psychological distress (mukhawwif). The purpose of this action is solely for discipline, not to cause harm.²⁴

Domestic violence (DV) is a complex issue involving legal, social, and moral dimensions. In the context of the Mazhab Shafi'i, there is a specific perspective on DV, particularly regarding the concept of nusyuz, which refers to a wife's failure to fulfill her duties to her husband, as well as the rights and obligations within the marital relationship. This analysis will explore the Shafi'i School's view on domestic violence from the perspective of Islamic law.

The Mazhab Shafi'i establishes a gradual approach in addressing nusyuz, which refers to a wife's disobedience to her husband in the marriage. In this view, the husband is first required to give advice when he observes any disharmony or inappropriate behavior from his wife. This advice serves as the initial step expected to improve the relationship without involving violence or coercion. In this way, the husband is given the opportunity to resolve issues through communication and understanding, which are central to a harmonious marital life.

If advice does not yield results and the wife's disobedience continues, the second step permitted in the Mazhab Shafi'i is bed separation. This separation is intended to create emotional distance between the husband and wife, which is hoped to encourage reflection and behavioral change on the part of the wife. This approach emphasizes that every action should be taken gradually and thoughtfully, without immediately resorting to violence. Thus, the husband is expected to use methods that do not harm the physical or mental well-being of the wife.

As a last resort, if the previous steps do not prove effective, the Mazhab Shafi'i permits the husband to strike the wife, provided that the strike does not cause injury or harm. This strike is considered a disciplinary measure only when all other efforts have failed. Although allowed, this action is highly restricted, with an emphasis that it must not result in negative physical consequences. This reflects the awareness that physical violence should not be the primary solution in marital conflicts.

However, this view is often criticized for its tolerance of limited physical violence. In the modern world, where awareness of women's rights continues to grow, the permission to strike a wife, even under specific restrictions, can be controversial. Many countries and modern societies emphasize the importance of protecting women from all forms of violence, and traditional views that permit physical actions in certain situations can be seen as

²⁴ Nik Faisal and Nik Ismail, "Aplikasi Kaedah Al-Aṣl Barā' Ah Al-Dhimmah Menurut Hukum Fiqh Dan Impelementasinya Dalam Perundangan Semasa Di Malaysia Application of the Al-Aṣl Barā' Ah Al-Dhimmah Method According to Fiqh Law and Its Implementation in Current Legislation in Malaysia" 5, no. 1 (2024): 125–38.

contrary to human rights principles.

In this context, the Shafi'i school's view may no longer be fully relevant to contemporary developments, where many countries implement stricter laws that prohibit all forms of domestic violence. Many contemporary scholars and human rights organizations emphasize the importance of resolving marital conflicts without physical violence. Instead, they propose an approach based on dialogue, mediation, and conflict resolution in a manner that is just, compassionate, and grounded in the Islamic principles of justice and well-being for all parties in marriage.

Overall, while the Shafi'i school's view on domestic violence seeks to balance the husband's rights with the protection of the wife, there is significant room for reform. Contemporary approaches that reject physical violence as a disciplinary method better reflect the Islamic values of justice and human rights protection. Reforms in this view would strengthen the protection of domestic violence victims and ensure that Islamic legal practices align with the development of women's rights and broader human rights values.

3.2. Positive Law Perspective on the Standardization of Domestic Violence

According to Law No. 23 of 2004 on the Elimination of Domestic Violence (UU KDRT), domestic violence is defined as any act inflicted upon an individual, particularly women, that results in physical, sexual, and/or psychological suffering or distress. Furthermore, domestic violence also encompasses actions that restrict or deprive a person of their rights within the household environment.²⁵ This definition encompasses a wide range of harmful behaviors, including physical violence, sexual violence, psychological abuse, and any actions that limit an individual's freedom or rights within the family.

Domestic violence (KDRT) encompasses various actions that can cause physical, emotional, and social harm to victims. Physical violence refers to actions that result in injury, such as hitting or kicking, which directly affect the victim's physical health. Sexual violence includes all forms of non consensual sexual acts, including rape and harassment, which not only cause physical harm but also leave emotional trauma. Psychological violence aims to destroy the dignity and mental well being of the victim through threats, intimidation, or humiliation. Economic violence involves controlling the victim's access to financial resources, creating economic dependency. Other forms of violence include neglect or discrimination that deprives the victim of their rights. All these forms of violence, as regulated in UU KDRT, reflect the wide range of problems that can occur in household life and pose serious consequences for the victim.

Thus, the definition of domestic violence according to UU KDRT is broad and includes various harmful behaviors towards victims, whether physically, emotionally, or socially, in the household context. This law provides protection for victims from various forms of violence, including physical, sexual, psychological, and economic violence, as well as other

²⁵ Emilda Firdaus, "Implementasi Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga Di Kota Batam," *Jurnal Hukum Ius Quia Iustum* 21, no. 1 (2014): 139–54, <https://doi.org/10.20885/iustum.vol21.iss1.art8>.

discriminatory actions that may limit individuals' rights within the family environment. This demonstrates the law's commitment to providing comprehensive protection for every family member vulnerable to acts of violence.

Article 5(1) and Article 44 of Law No. 23 of 2004 on the Elimination of Domestic Violence (UU KDRT) establish a solid legal foundation for ensuring protection and justice for victims. Article 5(1) affirms that all individuals, including family members, have the right to seek assistance from authorities if they experience domestic violence. This highlights the entitlement of victims, including wives subjected to abuse, to receive legal protection from the state. Meanwhile, Article 44 outlines criminal penalties for perpetrators of domestic violence, including husbands who inflict harm on their wives, in accordance with existing laws. This provision specifically addresses physical violence that results in pain, injury, or health complications. Collectively, these articles reinforce Indonesia's legal commitment to safeguarding victims and ensuring criminal accountability for offenders, thereby strengthening justice and legal protection in domestic violence cases.

However, the legal process concerning domestic violence must follow the judicial procedures applicable in the District Court.²⁶ This means that a husband who commits domestic violence will be processed legally in accordance with the procedures set forth in Indonesia's criminal procedural law. This process includes a series of stages, from investigation, prosecution, to trial, where relevant evidence will be evaluated to determine the guilt or innocence of the perpetrator.²⁷

UU KDRT provides a comprehensive definition of domestic violence, including physical, sexual, psychological, economic violence, and other forms of violence. This ensures that the various forms of violence experienced by victims can be recognized and legally addressed²⁸. However, this broad definition can lead to varying interpretations in its application, potentially making it difficult for law enforcement to consistently identify and classify acts of domestic violence. Moreover, there are several challenges that need to be addressed in the implementation and enforcement of the law. Despite its strong foundation in definition and scope, the greatest challenge lies in the aspect of implementation and law enforcement. Many domestic violence cases often go unreported or are not handled properly by the authorities.²⁹

Although the Domestic Violence Law (UU KDRT) has been enacted in Indonesia, there are several challenges that hinder its effectiveness.³⁰ One of the main obstacles is weak law

²⁶ Muhammad Surya Adi Wibowo, "Pelaksanaan Proses Peradilan Dan Pemenuhan Hak Dalam Perlindungan Hukum Bagi Anak (Menurut UU No. 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak)," *Reformasi Hukum* 24, no. 1 (2020): 21–40.

²⁷ Hariman Satria, "Ke Arah Pergeseran Beban Pembuktian," *Integritas* 3, no. 1 (2017): 87–114.

²⁸ Setiawan et al., "Pemahaman Dan Faktor – Faktor Penyebab Kekerasan Dalam Rumah Tangga: Tinjauan Literatur."

²⁹ Hana Fairuz Mestika, "Perlindungan Hukum Pada Perempuan Korban Kekerasan Dalam Rumah Tangga Di Indonesia," *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 2, no. 1 (2022): 118–30, <https://doi.org/10.15294/ipmhi.v2i1.53743>.

³⁰ Abdur Rohman and Ita Rahmania Kusumawati, "Penerapan Undang-Undang Batas Minimal Usia Perkawinan Dan Dampaknya Dalam Masyarakat," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 9, no. 2 (2022):

enforcement, where the application of the law is often hampered by a lack of resources, corrupt practices, and the strong influence of patriarchal culture. As a result, many domestic violence cases cannot be adequately processed. Additionally, cultural and social stigma plays a significant role, where victims often hesitate to report violence due to fear of facing pressure from family or society. This stigma reinforces the victim's powerlessness and complicates law enforcement. The lack of support and services is also a serious issue, as domestic violence victims require comprehensive assistance such as psychological support, protection, and financial aid. Without adequate supporting services, law enforcement alone will not be enough to provide comprehensive protection to the victims.

The regulation on domestic violence is explicitly outlined in Article 5 of the Domestic Violence Law, which stipulates that "No individual is permitted to engage in acts of domestic violence against members of their household in any form.³¹ According to this article, domestic violence is categorized into four forms: (a) physical violence, which results in pain, illness, or serious injury; (b) psychological violence, which instills fear, diminishes self-confidence, and/or causes significant emotional distress; (c) sexual violence, which includes coercing a household member into sexual acts or compelling them into sexual exploitation for commercial purposes; and (d) household neglect, which leads to economic dependence by restricting or prohibiting the victim from working, whether inside or outside the home, thereby placing them under the perpetrator's control.

The basic principle underlying the enactment of Law No. 23 of 2004 is the awareness of discrimination and unfair treatment of women, both in public spaces and within households, and the need to protect children from sexual abuse and exploitation. This law provides legal regulations on domestic violence, case handling procedures, victim protection, and sanctions for perpetrators.

This anti domestic violence law was enacted based on several key considerations: First, every citizen has the right to security and freedom from all forms of violence, particularly those committed by a spouse. Second, all forms of violence, especially domestic violence, constitute human rights violations and crimes against human dignity that must be eradicated. Third, victims of domestic violence, most of whom are women and children, must receive protection from the state or society to safeguard them from violence, threats, torture, or degrading treatment. Fourth, statistical data and real-life cases indicate that domestic violence remains prevalent, while the Indonesian legal system still lacks adequate protection for victims.

From the perspective of positive law and human rights, domestic violence is a serious violation requiring firm legal action and comprehensive protection for the victims. The state has an obligation to protect the victims' rights, ensure justice, and provide effective recovery

377–93, <https://doi.org/10.32505/qadha.v9i2.5059>.

³¹ Ulfi Ana Khaira, Ferdy Saputra, and T Saifullah, "Penelantaran Rumah Tangga Oleh Suami Sebagai Bentuk Kekerasan Dalam Rumah Tangga Ditinjau Dari Uu Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga," *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh* 5, no. 1 (2022): 59–67, <https://doi.org/10.29103/jimfh.v5i1.6569>.

mechanisms.

4. CONCLUSION

The discourse on domestic violence (DV) from the perspective of the Shafi'i school of thought and Indonesian positive law reflects two distinct approaches that can complement one another in efforts to protect victims and establish a just family structure. In the Shafi'i view, DV is often associated with the concept of *nusyûz*, which, under specific conditions, allows a husband to take disciplinary measures such as giving advice, separating beds, and, as a last resort, administering a light, non-injurious strike. This perspective is rooted in moral responsibility to maintain household harmony. However, in modern society, such an approach is increasingly challenged for its potential to legitimize any form of physical violence. Thus, reinterpretation of classical Islamic texts is needed to align with contemporary values that uphold justice, gender equality, and the protection of human rights particularly women's rights. Meanwhile, Indonesian positive law, through Law No. 23 of 2004 on the Elimination of Domestic Violence, offers a more inclusive and comprehensive legal framework, addressing physical, psychological, sexual, and economic violence. Although normatively progressive, the implementation of this law often faces obstacles such as weak law enforcement, patriarchal cultural norms, limited access to support services, and persistent social stigma against victims. Therefore, concrete efforts are necessary to strengthen the enforcement of positive law while simultaneously reforming Islamic legal thought in a more humane and contextual direction. Integrating Islamic values rooted in justice with a national legal framework that prioritizes victim protection serves as a critical foundation for building a holistic and sustainable protection system. Such efforts not only aim to create safe and harmonious households but also reinforce the collective commitment of the state and society to eliminate all forms of domestic violence through both preventive and repressive measures.

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