

Legal Protection for Women as Victims of Domestic Violence with Restorative Justice Settlement

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Abstract. *Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the Almighty God, therefore the integrity and harmony in the household to be happy, safe, and peaceful is a desire of every person both before and after marriage. A household is a group of people or individuals who are united by the basis of legal and religious ties and have the same main goal of forming a harmonious family, a household can also be interpreted as the smallest community of a society, a peaceful and peaceful household is certainly the hope of everyone, to be able to realize this depends on each individual in one household, especially in behaving, being able to maintain attitudes and control themselves in each person in the household. Domestic violence is very vulnerable to occur in the household. In this case, victims of domestic violence do not only befall wives or husbands but also people who are in the household. However, in general, victims of domestic violence are mostly women who are considered very weak creatures. In the Islamic view, it is emphasized that the purpose of a household is to establish a sense of affection and fulfill peace (sakinah) in the household. Therefore, Islam firmly rejects the crime of domestic violence. Domestic violence in the Domestic Violence Law is any act against a person, especially women, which results in physical, sexual, psychological misery or suffering and/or neglect of the household, including committing acts, coercion, or unlawful deprivation of liberty in the household.*

Keywords: *Domestic; Justice; Legal; Protection; Restorative.*

1. Introduction

The Unitary State of the Republic of Indonesia is a state based on the Almighty God, which is regulated in Article 29 Paragraph (1) of the 1945 Republic of Indonesia Law. This means that everyone must always live by involving Almighty God, including in running a household in the smallest unit in society, namely the family, based on worship to Almighty God. A family consists of a father, mother and child who are related by blood in a straight line up or down to the third degree. The formation of a legitimate family is after a marriage or marriage occurs in accordance with religious teachings and law, thus everyone who exercises their rights and obligations in a household needs to be based on religion in order to build a happy, peaceful, and calm household and can carry out the mandate as a producer of quality future generations. To realize the integrity of the household depends on the morals and control of each person in carrying it out.

In our national life we can see a lot of progress, this progress is known from the many national and international legal instruments that can be used to support the creation of a legal goal in the form of peace and justice in society. Justice itself is a value of equality, in political ethics justice is getting the same treatment in the same circumstances, in the opening of the 1945 Constitution it guarantees that in achieving the goals of the state the first essential value is social justice. In order to realize these goals, the State of Indonesia has functions, one of which is as a stabilizer, namely as an implementer of order to achieve common goals and also to uphold justice, this function is very much needed by a country and all its people, so that enforcement can run by judicial bodies.¹

Today we must have understood the objectives of the Indonesian government as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia that the objectives of the Indonesian government are to protect all Indonesian people and all Indonesian territory. As is known, the Criminal Code in force in Indonesia has not yet formulated general criminal guidelines that regulate judicial pardons. The formulation of criminal law is important because it is in accordance with the flexibility or elasticity and modification of punishment that is derived from the values of religious wisdom. In this case, the State has a responsibility to fully protect citizens to achieve a life goal desired by individuals in the State of Indonesia. We already know that the State of Indonesia is a state of law and upholds the values of justice and strict sanctions for every act that violates the law or is against the law, the many cases of criminal acts in Indonesia today that are currently popular, one of which is domestic violence.²

¹Preamble to the 1945 Constitution of the Republic of Indonesia

²Sri Endah Wahyuningsih, 2018, Model for Developing Criminal Law Principles in the Criminal Code Based on the Values of Belief in the Almighty God, Fastindo, Semarang, page 128

In general, women assume that violence committed by their husbands against them is common and ordinary. Women who are victims usually can only accept the situation, and husbands also consider violence committed in their households to be commonplace events that are beyond the reach of the law. The frequent occurrence of violence in society, especially in families, is a dark note in the history of this nation, there are many stories about violence against women that are quite concerning. Eliminating the cycle of violence is a complex problem, with many causes and several steps or solutions are needed to resolve it, not only concerning the legal product of the Law on the Elimination of Domestic Violence as stated in Law Number 23 of 2004. Eliminating Domestic Violence means building awareness that the problem of domestic violence is also a violation of the law related to human rights that can be punished with imprisonment. Law on the Elimination of Domestic Violence Number 23 of 2004 is a regulation that aims to eliminate violence in any form in the household, be it physical violence, psychological violence, sexual violence or neglect of the household. This is seen in Article 1 of the Domestic Violence Law which provides a broad understanding of domestic violence. Domestic violence in the Domestic Violence Law is any act against a person, especially women, which results in physical, sexual, psychological misery or suffering and/or neglect of the household, including committing acts, coercion, or unlawful deprivation of liberty in the household environment, in general it can be explained that the definition of legal protection is an act of protecting or providing assistance in the legal field.³ Domestic violence is a conflict that occurs in a household that is carried out by verbal and physical attacks on a partner, it can also be against a child, this discussion focuses on couples, other violence is defensive violence, violence that occurs due to self-protection. Psychological Violence in Article 7 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence can be interpreted as an action that results in fear, loss of self-confidence, loss of ability to act, feelings of helplessness, and severe psychological suffering in a person, the difference between psychological and physical lies in the form of actions such as hitting and kicking and so on is physical violence, while psychological violence is like forcing others to do things they don't like, both have the same detrimental impact on the victim. Criminal sanctions for perpetrators of domestic violence are regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, which contains rules on criminal acts of domestic violence, including legal provisions and sanctions for perpetrators. Article 44 contains rules related to punishment or criminal sanctions for domestic violence with physical acts, in paragraph 4 of Article 44 is a complaint offense, while psychological crimes in Article 45 paragraph (2) are complaint offenses. And in Article 51 of Law Number 23 of

³ https://ditjenpp.kemenkumham.go.id/index.php?option=com_content&view=article&id=677:pe-newakan-hukum-kejahatan-kekerasan-dalam-rumah-tangga&catid=101&Itemid=181

WJS.Purwodarminto, 1959, Law Enforcement of Domestic Violence Crimes, page 224, Accessed on September 27, 2024 at 16.24 WIB

2004 concerning the Elimination of Domestic Violence, the crime of physical violence in Article 44 paragraph 4 is a complaint offense. The PKDRT Law clearly stipulates that anyone who commits violence in the family sphere is subject to criminal sanctions as regulated in Chapter VIII Article 44 which states that: (1) Anyone who commits an act of physical violence in the household sphere as referred to in Article 5 letter a shall be punished with imprisonment for a maximum of 5 (five) years or a maximum fine of IDR 15,000,000.00 (fifteen million rupiah); (2) In the case where the act as referred to in paragraph (1) results in the victim becoming ill or seriously injured, the punishment shall be a maximum of 10 (ten) years imprisonment or a maximum fine of IDR 30,000,000 (thirty million rupiah); (3) In the case where the act as referred to in paragraph (2) results in the death of the victim, the punishment shall be a maximum of 15 (fifteen) years imprisonment or a maximum fine of IDR 45,000,000 (forty-five million rupiah); and (4) In the case where 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 an obstacle to carrying out work or livelihood or daily activities, the punishment shall be a maximum of 4 (four) months imprisonment or a maximum fine of IDR 5,000,000 (five million rupiah). Meanwhile, Article 45 also stipulates that: (1) Any person who commits an act of psychological violence within the scope of the household as referred to in Article 5 letter b shall be punished with a maximum imprisonment of 3 (three) years or a maximum fine of IDR 9,000,000.00 (nine million rupiah); (2) In the case of the act as referred to in paragraph (1) being committed by a husband against a wife or vice versa which does not cause illness or obstacles to carrying out work or livelihood or daily activities, shall be punished with a maximum imprisonment of 4 (four) months or a maximum fine of IDR 3,000,000 (three million rupiah). Article 46 also states that: Any person who commits an act of sexual violence as referred to in Article 8 letter a shall be punished with a maximum imprisonment of 12 (twelve) years or a maximum fine of IDR 36,000,000 (thirty-six million rupiah). And Article 47 states: Any person who forces a person residing in his/her household to have sexual relations as referred to in Article 8 letter b shall be punished with imprisonment of at least 4 (four) years and imprisonment of at most 15 (fifteen) years or a fine of at least IDR 12,000,000 (twelve million rupiah) or a fine of at most IDR 300,000,000 (three hundred million rupiah). Article 49 states that: In the event that the acts referred to in Article 46 and Article 47 result in the victim receiving injuries that do not give hope of healing at all, experiencing mental or mental disorders for at least 4 (four) weeks continuously or 1 (one) year not in a row, miscarriage or death of the fetus in the womb, or resulting in the failure of the reproductive organs to function, shall be punished with imprisonment of at least 5 (five) years and imprisonment of at most 20 (twenty) years or a fine of at least IDR 25,000,000.00 (twenty five million rupiah) and a fine of at most IDR 500,000,000.00 (five hundred million rupiah). It is interesting to note that family neglect can also be punished as regulated in Article 49 which states: Anyone

who: Any person who forces a person residing in his/her household to engage in sexual relations as referred to in Article 8 letter b shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 15 (fifteen) years or a fine of at least IDR 12,000,000 (twelve million rupiah) or a fine of at most IDR 300,000,000 (three hundred million rupiah). Article 49 states that: In the event that the acts referred to in Article 46 and Article 47 result in the victim receiving injuries that do not give hope of healing at all, experiencing mental or mental disorders for at least 4 (four) weeks continuously or 1 (one) year not in a row, miscarriage or death of the fetus in the womb, or resulting in the failure of the reproductive organs to function, shall be punished with imprisonment of at least 5 (five) years and imprisonment of at most 20 (twenty) years or a fine of at least IDR 25,000,000.00 (twenty five million rupiah) and a fine of at most IDR 500,000,000.00 (five hundred million rupiah). It is interesting to note that family neglect can also be punished as regulated in Article 49 which states: Anyone who: Any person who forces a person residing in his/her household to engage in sexual relations as referred to in Article 8 letter b shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 15 (fifteen) years or a fine of at least IDR 12,000,000 (twelve million rupiah) or a fine of at most IDR 300,000,000 (three hundred million rupiah). Article 49 states that: In the event that the acts referred to in Article 46 and Article 47 result in the victim receiving injuries that do not give hope of healing at all, experiencing mental or mental disorders for at least 4 (four) weeks continuously or 1 (one) year not in a row, miscarriage or death of the fetus in the womb, or resulting in the failure of the reproductive organs to function, shall be punished with imprisonment of at least 5 (five) years and imprisonment of at most 20 (twenty) years or a fine of at least IDR 25,000,000.00 (twenty five million rupiah) and a fine of at most IDR 500,000,000.00 (five hundred million rupiah). It is interesting to note that family neglect can also be punished as regulated in Article 49 which states: Anyone who:

- 1) neglecting other people within the scope of his/her household as referred to in Article 9 paragraph (1);
- 2) neglecting another person as referred to in Article 9 paragraph (2)

The types of criminal penalties are also added as in Article 50 of the Domestic Violence Law, namely: In addition to the criminal penalties as referred to in this Chapter, the judge may impose additional penalties in the form of:

- a) restrictions on the perpetrator's movement, whether aimed at keeping the perpetrator away from the victim for a certain distance and time, or restrictions on certain rights of the perpetrator;

b) determination of the perpetrator to follow a counseling program under the supervision of a certain institution.⁴

From the verse above, it is known that the original law of jinayah is qishash, but sometimes the law of qishas is obstructed by several mawani' (obstacles), so that al-jani (perpetrators of jinayah) are given another punishment, namely diyat (fine) as compensation for the damage caused. In Islamic criminal law, someone who injures or harasses another person can be punished according to the concept of ta'zir which applies in the Islamic legal system. There are several punishments that are carried out in accordance with the laws in force in the country and the legal authorities that implement them, but the aim is to protect the rights of individuals and society and ensure justice. Qisas punishment can also be imposed, which includes various forms of torture such as force on the hands, feet or other parts of the body, but if the victim forgives, the qisas punishment can be replaced with diyat (fine) or ta'zir (additional punishment).⁵

In the Big Indonesian Dictionary (KBBI) the meaning of Protection is a way, process, act of protecting. According to Article 1 paragraph (4) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Protection here is all efforts aimed at providing a sense of security given to legal subjects in the form of legal instruments, both preventive and repressive. Legal protection is an effort to protect carried out by the government or authorities with existing regulations. Legal Protection is protection of dignity and honor, as well as recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of regulations or rules that will be able to protect one thing from another. In relation to consumers, it means that the law provides protection for customer rights from something that results in the non-fulfillment of these rights. Legal Protection is a narrowing of the meaning of protection, in this case only protection by law is provided by law, also related to the existence of rights and obligations, in this case owned by humans as legal subjects in their interactions with other humans and their environment. The government has created and stipulated Law Number 23 of 2004 concerning the Elimination of Domestic Violence, this means that the government provides guarantees for the fulfillment and protection of the human rights of women and men or children

⁴ <https://rmol.id/publika/read/2023/10/13/592928/psikologi-hukum-kekerasan-dalam-rumah-tangga-perspektifpancasila#:~:text=In%20the%20Constitution%20in%20the%20opening%20of%20the%20UUUD,the%20first%20principle%20is%20more%20>Prihatin Kusdini, Legal Psychology of Domestic Violence from a Pancasila Perspective, Accessed on October 08, 2024 at 15.35 WIB

⁵Al-Qur'an Surah Al-Maidah Verse 45

and adults to obtain justice, comfort, peace, equality in social life, both in family life, society, and the state.⁶

Restorative justice is an approach to resolving criminal cases that focuses on efforts to create justice and balance for perpetrators and victims. The justice system that usually focuses on punishment is replaced by dialogue and mediation to reach an agreement that is beneficial for all parties involved to be more fair and balanced, Restorative justice involves restoring the relationship between the victim and the perpetrator based on a mutually agreed agreement, where the victim can convey the losses they have experienced and the perpetrator has the opportunity to correct the mistake using forms such as compensation, peace, community service, or other agreements. resolving domestic violence through Restorative Justice is an approach that focuses on restoring the damage caused by acts of violence, both to the victim, the perpetrator, and the community. First, in this context, Restorative Justice allows victims to express the emotional, physical, and psychological impacts of the violence they have experienced. This provides an opportunity for victims to gain recognition for the suffering they have experienced, through Restorative Justice, perpetrators are given the opportunity to acknowledge and take responsibility for the violent behavior they have committed. This process allows perpetrators to understand the negative impact of their actions on the victim and the community, and to feel motivated to correct their mistakes. The Restorative Justice mechanism also involves negotiations between victims and perpetrators with the help of a mediator, victims can convey their needs, while perpetrators have the opportunity to offer a form of restitution or compensation that is appropriate to the harm caused, the main goal of the Restorative Justice approach is to achieve reconciliation that allows victims to feel heard, understood, and get justice that meets their needs, while perpetrators can correct their mistakes and learn from the experience.⁷

In Islam, peace is highly recommended as a solution to resolve disputes, both within the family and the surrounding environment, to restore harmony and affection, in Islam, the concept of handling disputes between husband and wife is to maintain the integrity of the household. Islam encourages its adherents to avoid conflict in the family, but if disputes still occur then peace must be prioritized as long as it does not violate the sharia. Peace is considered valid as long as it does not conflict with the rights of Allah SWT and the Messenger of Allah SAW. Peace that violates these rights includes an agreement stating that the

⁶Soesilo R, 1981, Criminal Code and Comments through Wulan's thesis, Criminal Sanction Policy Against Victims of Domestic Violence in the Law on the Elimination of Domestic Violence, Politeia, Bogor, page 97

⁷ Humairah, Siti, "RESTORATIVE JUSTICE RESOLUTION OF DOMESTIC VIOLENCE (KDRT) ACCORDING TO THE PROSECUTOR'S OFFICE IN BIREUEN DISTRICT (Empirical Study) Republic of Indonesia Attorney General's Regulation Number 15 of 2020), 2020

husband will not have intercourse with his wife again, or an agreement involving forbidden acts such as adultery, drinking alcohol, or stealing.

2. Research Methods

Research is one of the main means in developing science and technology. This is because this research aims to find, develop or test the truth of knowledge. Finding means trying to get something to fill a gap or deficiency. Developing means expanding or digging deeper into what already exists. While testing the truth is done if what already exists or is still in doubt. To obtain accountable results, researchers use methods that should be used in legal research.

3. Research and Discussion

3.1. Legal Protection for Women as Victims of Domestic Violence Resolved with Restorative Justice

The high number of domestic violence cases currently shows that household harmony is declining. Thus, it is important to encourage the community's obligation to increase understanding of domestic violence and also about household relations which are a bond of commitment from both parties to form a family that respects each other and is free from violence. According to Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Article 1 number (1) states that: "Domestic violence is any act against a person, especially women, which results in physical, sexual, psychological misery or suffering, and neglect of the household including threats to commit acts, coercion or deprivation of liberty unlawfully within the scope of the household.

Domestic violence is one of the crimes that can be resolved through Restorative Justice by the parties. Restorative justice is a case resolution that emphasizes the direct participation of the perpetrator, victim, and community. Not all crimes must be pursued through the trial process. Prioritizing peace through deliberation to reach consensus is an integral mechanism in community life. Settlement of criminal cases through mediation is one way to realize restorative justice that cannot be separated from the ideals of law based on the legal basis of justice (law is justice), and the legal principles of the case resolution process that refer to written and unwritten legal sources.

Restorative justice is a justice that seeks to restore conditions to their original state, for the benefit and victory of all parties, and is not limited by procedural and rigid legal mechanisms. Almost all crimes dealt with by the criminal justice system end in prison. In reality, correctional institutions are not the solution to the problem of crime that occurs, because such a system sometimes does not always produce good results such as not always succeeding in improving the perpetrator's personality, and resulting in the failure to prevent perpetrators who have committed crimes from committing their actions again. The imposition of

criminal sanctions in prison is also considered a punishment that will only leave misery, bad stigma and economic problems.⁸

With the existence of regulations or laws governing domestic violence, it is a progressive breakthrough in criminal law, but in the implementation of the criminal law system it still focuses on the perpetrator. If this happens to the husband, the victim will feel or think twice about continuing her lawsuit because of the relationship or family relationship between them. In general, law enforcement officers also view domestic violence as a complaint offense, where in general the resolution of this case is resolved amicably. Articles related to the provisions of the law on domestic violence have made it possible as a means or effort for law enforcement officers to be used as a reference for law enforcement officers' actions for perpetrators of domestic violence. In addition, legal assistance provided by the government, the community is also encouraged to provide legal assistance through legal institutions whose numbers and activities are increasing in providing legal assistance to victims.

Enforcement of criminal sanctions is part of law enforcement that needs to be applied firmly so that cases of domestic violence can be reduced and even eliminated as intended by the implementation of Law No. 23 of 2004 concerning the Elimination of Domestic Violence. Law enforcement needs to be continuously pursued so that by overcoming obstacles that become obstacles so that the resolution of domestic violence cases can be resolved and can provide justice for the victims who have suffered and been harmed by the actions of the perpetrators of the violence. A perpetrator of physical violence in the household based on the provisions of Article 44 paragraph (1) can be punished with a maximum imprisonment of 5 (five) years or a maximum fine of IDR 15,000,000, (fifteen million rupiah), if this physical violence results in the victim falling ill or being seriously injured, then Article 44 paragraph (2) determines that the perpetrator can be punished with a maximum imprisonment of 10 (ten) years or a maximum fine of IDR 30,000,000,- (thirty million rupiah). The criminal sanctions for perpetrators of physical violence will be increased in Article 44 paragraph (3) if it results in the death of the victim with a maximum imprisonment of 15 (fifteen) years or a maximum fine of IDR 45,000,000, (forty five million rupiah). The sanctions for perpetrators of physical violence can be reduced as regulated in Article 44 paragraph (4) if the act of physical violence committed by the husband against the wife does not cause illness or obstacles to carrying out work or livelihood or daily activities with a maximum prison sentence of 4 (four) months or a maximum fine of IDR 5,000,000, (five million rupiah). For perpetrators of psychological violence based on the provisions of Article 45 paragraph (1) anyone who commits an act of psychological violence within the scope of the household

⁸Irianto Sulistyowati, 2006, *The Issue of Domestic Violence from the Perspective of Legal Pluralism*, in *Women and the Law Towards Law with a Perspective of Equality and Justice*, Obor Foundation, Jakarta, p. 313

as referred to in Article 5 letter b shall be punished with a maximum imprisonment of 3 (three) years or a maximum fine of IDR 9,000,000,- (nine million rupiah) and Article 45 paragraph (2) states that in the case of acts as referred to in paragraph (1) committed by a husband against a wife or vice versa which does not cause illness or obstacles to carrying out work or livelihood or daily activities, shall be punished with a maximum imprisonment of 4 (four) months or a maximum fine of IDR 3,000,000.00,- (three million rupiah).” The birth of Law Number 23 of 2004, it is hoped that there will be awareness of victims to report to the authorities or law enforcement officers if there is a crime of domestic violence. According to the law, victims are socially weak victims, namely those who have a weak social position or status, which makes someone a victim, especially women and children.⁹

Law Number 23 of 2004 concerning the Elimination of Domestic Violence, states that protection, as regulated in Article 16, victims receive protection:

- 1) Within 1 x 24 hours (one times twenty-four) hours from the time of knowing or receiving a report of domestic violence, the police are required to immediately provide temporary protection to the victim.
- 2) Temporary protection as referred to in paragraph (1) is provided for a maximum of 7 (seven) days from when the victim is received or handled.
- 3) Within 1 x 24 hours (one times twenty-four) hours from the time the protection is granted as referred to in paragraph (1), the police are required to request a letter of determination of the protection order from the court.

Law Number 23 of 2004 concerning the Elimination of Domestic Violence Article 17 states that "in providing temporary protection, the police can work together with health workers, social workers, volunteer companions, and/or spiritual guides to accompany the victim" and Article 18 states that the police are required to provide information to the victim regarding the victim's right to receive services and assistance.

Recovery for Victims of Domestic Violence Recovery for victims of domestic violence needs to be done immediately considering that domestic violence can cause physical and psychological suffering. Victims of domestic violence can experience trauma due to the forms of treatment they experience and will affect their survival. Law Number 23 of 2004 concerning the Elimination of Domestic Violence, regulates the recovery of victims of domestic violence, as stated in Article 39 For the purpose of recovery, victims can obtain services from:

- a) health workers;

⁹Yahya, Ahmad, Zein, *Problematika Hak Asasi Manusia*, First Edition First Printing, Liberty. Yogyakarta, 2012, page 51

- b) social worker;
- c) volunteer companion; and/or
- d) spiritual guide.

Government Regulation of the Republic of Indonesia Number 4 of 2006 concerning the Implementation and Cooperation in the Recovery of Victims of Domestic Violence, Article 1: In this Government Regulation, the following terms are defined as:

- 1) Victim recovery is all efforts to strengthen victims of domestic violence to become more empowered, both physically and psychologically.
- 2) The provision of recovery is all actions that include services and assistance to victims of domestic violence.
- 3) Assistance is any action in the form of counseling, psychological therapy, advocacy, and spiritual guidance, to strengthen victims of domestic violence to resolve the problems they face.
- 4) Collaboration is a systematic and integrated way between recovery providers in providing services to restore victims of domestic violence.
- 5) Recovery officers include health workers, social workers, volunteer companions, and/or spiritual guides.
- 6) The Minister is a minister whose scope of duties and responsibilities is in the field of women's empowerment.

Thus, efforts to provide protection for victims of domestic violence are basically aimed at ensuring the ease of service for victims of domestic violence, ensuring effectiveness and efficiency for the recovery process for victims of domestic violence and creating good cooperation and coordination in the recovery of victims of domestic violence between agencies, between implementing officers, and between other related institutions.¹⁰

3.2. Islamic Law's View on Domestic Violence Crimes Resolved Through Restorative Justice

In Islamic criminal law, violence is included in criminal acts (jarimah). The definition of jarimah itself in Islam is an act that violates Islamic sharia law and is included in the category of crime (criminal) whether committed by an individual or group, intentionally or unintentionally. Jarimah in this case is divided into two, namely hudud jarimah and ta'zir jarimah. Hudud jarimah is a criminal act that has

¹⁰Andrew Lionel Laurika, 2016, Legal Protection for Victims of Domestic Violence

a form and legal limits in the Qur'an and Sunnah of the Prophet. While ta'zir jarimah is a criminal act whose form and legal threat are determined by the ruler (judge) as a lesson to the perpetrator.

The punishment for perpetrators of crimes other than life is the main punishment, namely qishas, Qishas in the sense of language is from the word "tattabi'al atsar" which means tracing. The opinion of the Malikiyah scholars, according to him, the perpetrators of the crime of persecution must still be subject to the punishment of qishas, especially persecution (al-jarh) which is carried out intentionally as long as it is possible to do it exactly the same as what was done by the convict and it is not feared that it will result in the death of the perpetrator. Another punishment is Takzir, Imam Malik is of the opinion that the perpetrator of the crime of deliberate persecution has the right to be takzir, whether he has the right to qishas or not, because there is a barrier to qishas, forgiveness or a peace agreement. preventing, hindering and deterring everyone from committing crimes. When the punishment of qishas cannot be applied, then the obligation to pay diat is a form of protection for the victim of the crime, besides that it is also a form of substitute punishment because of the principle of the teaching of forgiveness which is highly recommended or emphasized in the Qur'an and Sunnah.¹¹

Islam is a religion of rahmatan lil'alamin which adheres to the principle of equality, partnership (cooperation) and justice. The purpose of marriage is to achieve a family that is sakinah, mawaddah and rahmah. Therefore, all actions that cause the consequences of mafsadat contained in domestic violence can be categorized as unlawful acts. The absence of a law that is firmly established against perpetrators of domestic violence in Islamic criminal law, results in confusion and arbitrariness that continues to persist. Islam highly respects women and their position, and makes women a figure for a child in the household. So various views emerged, regarding this matter. First, the problem of nusyuz has actually been conceptualized very well in the Qur'an, but humans are indeed less understanding and wise in responding to it. The second view, seeing it contextually, that there needs to be new thinking so that Islam does not look monotonous (continuous so that it is boring). Islam brought by the Prophet Muhammad, is the final religion, the Koran is not only suitable for all places, for the time of the Prophet and Arab countries but also in all subsequent times until the end of the world (shâlih li kulli zamân wa makân).

Domestic violence is often referred to as a hidden crime, because both the perpetrator and the victim try to keep the act secret from public view, Article 28 of the 1945 Constitution which regulates Human Rights, that all forms of violence, especially domestic violence, are violations of human rights and crimes

¹¹Amina Wadud, 2006, The Qur'an According to Women, PT Serambi Ilmu Semesta, Jakarta, page 132

against human dignity and forms of discrimination, so that based on these considerations, Law Number 23 of 2004 was born which regulates the Elimination of Domestic Violence. Protection of Domestic Violence. As a complaint offense, criminal sanctions are the last resort (*ultimatum remedium*), if peace occurs, the case will be dropped. Article 1 Paragraph (25) of Law Number 8 of 1981 concerning the Criminal Code, explains that, A complaint is a notification accompanied by a request by an interested party to an authorized official to take legal action against a person who has committed a complaint crime that is detrimental to him. A complaint offense is an offense that can only be prosecuted because of a complaint from the injured party, so that it can be dropped or resolved out of court. Although in principle criminal law does not recognize the existence of a mechanism for resolving criminal acts outside the court, it is different from civil law which recognizes the existence of case resolution outside the court through mediation. Dispute resolution outside the court (non-litigation) is often called Alternative Dispute Resolution (ADR). According to Made Widnyana (2007: 19) Alternative Dispute Resolution is a concept that includes various forms of dispute resolution other than the judicial process through legal means, Domestic violence is one of the crimes that can be resolved through restorative justice by the parties. Restorative justice is a case resolution that emphasizes the direct participation of the perpetrator, victim, and community. Not all criminal acts must be taken through the trial process. Prioritizing peace through deliberation to reach a consensus is an integral mechanism in community life. Settlement of criminal cases through mediation is one way to realize restorative justice that cannot be separated from the ideals of law which are based on the legal basis, namely justice (law is justice), and the legal principles of the case resolution process that refer to written and unwritten legal sources.¹²

Restorative justice can be interpreted as an alternative to resolving a criminal case. The application of restorative justice will cause a shift in the direction of the purpose of punishment which is to punish the perpetrator which should be to repay the fine to be done by means of healing to the original state before the criminal incident. Restorative justice is an approach that focuses on the needs of both the victim and the perpetrator of the crime. The concept of Restorative Justice no longer measures justice based on the victim's appropriate retribution to the perpetrator either physically, psychologically or criminal punishment but the painful act is healed by providing support to the victim and requiring the perpetrator to be responsible, with the help of family and society if needed. Restorative justice can be interpreted as an alternative to resolving a criminal case. The application of restorative justice will cause a shift in the direction of punishment which is to punish the perpetrator which should be to repay the fine

¹² Rufinus Hotmalana Hutauruk, 2013, Combating Corporate Crime Through a Restorative Approach: A Legal Breakthrough, Sinar Grafika, Jakarta

to be done by means of healing to the original state before the criminal incident.¹³

The characteristics of Islamic criminal law are not oriented towards punishing perpetrators of criminal acts, but aim to resolve social problems that arise as a result of criminal acts. Criminal sanctions can be adapted to the dynamics of legal justice and social justice that develop in society. The philosophy of Islamic criminal law is restorative justice and not retributive justice. Restorative justice is an alternative solution to criminal problems with an emphasis on restoring problems or conflicts and restoring balance in society. The focus of the Restorative justice approach is to repair the damage or loss caused by the crime, so it needs to be supported by the concept of restitution, namely efforts to restore the losses suffered by the victim. Therefore, there are three general conceptualizations in restorative justice, namely encounter, reparative, and transformative. Encounter emphasizes the meeting between victims, perpetrators, and community members to resolve disputes and problems arising from the crime. Reparative emphasizes the state in which all parties find themselves after the restorative process takes place, such as a sense of empowerment, empathy, and resolution). While transformative is changing the way we interact and relate to the world around us.

Restorative justice in Islam has special characteristics that distinguish it from other legal systems. Islamic restorative justice integrates 3 aspects: Legal, Moral, and Spiritual, this can be seen in the philosophy of law (ta'abbudi and ta'aqquli), legal ranking (mandub and makruh), and the determination of actions and diversity of legal sanctions (physical; whipping, financial; fines, moral; execution of punishment in the open, and spiritual; kaffarat), and reasons for the elimination of punishment (forgiveness, repentance). The Legal aspect aims to ensure legal certainty, the moral aspect aims to realize social justice, and the spiritual aspect aims to reform the perpetrators of the crime.

Justice in the Islamic legal system refers to the fulfillment of two types of justice, namely legal justice and social justice. Legal justice and social justice in the Islamic legal system are seen in the determination of legal sanctions. Legal sanctions such as physical sanctions (stoning, tying, qisas) and financial sanctions (diyat) aim to uphold legal justice. Moral and spiritual sanctions, such as paying kaffarat (freeing slaves, feeding the poor) aim to create social justice.¹⁴

The main principle in Islamic teachings is as a religious teaching that is Rahmatan lil 'Alamin, Islam views that all humans are equal before Allah SWT. Al-shulhu as a means of realizing peace can be attempted by the disputing parties or by a third

¹³Firman Freaddy Busroh, Yuli Asmara Triputra, and Andi Chandra, "Normative Analysis of Restorative Justice in the Process of Resolving Domestic Violence", Tripatang Journal, 2021

¹⁴Ali Sodikin, ISLAMIC RESTORATIVE JUSTICE SYSTEM AS A BASIS FOR FORMING JUST LAW, Doctoral Program in Sharia Law, Kalijaga State Islamic University, Yogyakarta, 2023

party who tries to help the parties resolve the dispute. Thus, cases of domestic violence resolved with restorative justice are an implementation of as-shulh (peace) in Islam, which means a case or dispute that is resolved peacefully without any coercion from anyone, it is undeniable that in family life there needs to be love, harmony and peace. The Qur'an strongly emphasizes that Muslims realize peace in resolving family problems in order to maintain the sustainability of family ties and child care. According to the Qur'an, maintaining integrity and creating peace at the family level is as important as creating peace within the family environment, therefore when there is a problem within the scope of the household, for example a case of violence committed by a husband against his wife or domestic violence, it is better to resolve it using a peaceful path or in positive law it is called restorative justice, because resolving cases of domestic violence using restorative justice or shulh (peace) in Islamic law is highly recommended, because in Islam itself Islam is a religion of peace, In accordance with its name Islam means peace Prophet Muhammad SAW came to bring the religion of Islam to describe the deepest essence, that the teachings brought are religions that teach about peace, shulh in Islamic law is a type of contract to end a type of dispute or agreement to resolve disputes peacefully and forgive each other, so that with peace it will avoid destruction (affectionate relationships) as well as hostility between the disputing parties can be ended.¹⁵

4. Conclusion

Domestic violence is one of the crimes that can be resolved through Restorative Justice by the parties. Criminal settlement with a peace mechanism like this can be called Restorative Justice. Domestic violence cases that actually have criminal elements are often resolved through deliberation even though the crime committed by the perpetrator is not a complaint offense. However, based on reasons for the interests of all parties and the integrity of the household, mediation is often the best choice. As an effort to protect repressive law and legal reform through the enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, this Law is considered to be in favor of women. Based on this Law, violence against women does not only refer to physical violence, but there are other types of violence, namely physical violence, emotional violence, sexual violence and economic violence. Although in reality it does not immediately reduce cases of violence against women in Indonesia. Domestic violence can cause victims due to physical, psychological, sexual violence or neglect, so that efforts are needed to protect victims, including physical and psychological health recovery. Thus, legal protection for victims of domestic violence is very important considering the physical and psychological suffering experienced by the victim due to the perpetrator's actions. The implementation of legal protection needs to involve the government, society,

¹⁵Aravik, Havis, "Consumer Dispute Resolution Through Al-Shulhuh Channels and Al-Hisbah Bureau.", *Economica Sharia* 1, No 2, 2016, pp. 32-44

social institutions, legal aid institutions to provide a sense of security for victims and freedom from the threat of physical or psychological violence during their health recovery period.

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