

Violence in the Household (KDRT) Perspective *Maqashid Sharia* (Case Study at Sungguminasa District Court)

Fania Putri Zaidathul

Postgraduate Student of Alauddin State Islamic University of Makassar, Indonesia

Email: fanyfenn04@gmail.com

Kurniati

Alauddin State Islamic University of Makassar, Indonesia

Email: kurniati@uin-alauddin.ac.id

Asni

Alauddin State Islamic University of Makassar, Indonesia

Email: asni.azrai@uin-alauddin.ac.id

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Abstract : This Study discuss about violence in Household (domestic violence) in perspective *maqashid sharia*. This study employed a field research design utilizing qualitative and descriptive research methods as well as normative theology and juridical approach. The data sources in this research are primary data, secondary data and tertiary data. The result of this research show that : 1) Numerous causes, including communication, someone's character or behavior, jealousy, money, being married young, having the wrong idea about religion, emotions, and competition, are causative elements of violence in households. Putting this in perspective *Maqashid Sharia* has a significant impact on upholding someone's property, religion, soul, mind, and children because these are factors that can lead to further domestic violence; 2) Settlement efforts to resolve domestic violence are carried out by following the criminal procedural law system as regulated in Law Number 8 of 1981, concerning Criminal Procedure Law (KUHP) and in imposing sentences based on Law No. 24 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT), in this case the resolution efforts carried out by the Sungguminasa District Court are in line with the objectives of Islamic law, namely the protection of ensuring the 5 main principles in Islam, preserving religion, soul, mind, lineage and property.

Keywords: Violence in Households; *Maqashid Syariah*

INTRODUCTION

Islamic law views marriage as an extremely powerful contract, or *mitsaqan Ghalidzhan*, for adhering to Allah's will and performing it is a kind of worship.¹ Marriage aims to create a household life that is *sakinah, mawaddah* and *rahmah*.

¹A. Basiq Djalil, *Pernikahan Lintas Agama dalam Perspektif Fiqih dan Kompilasi Hukum Islam* (Jakarta: Qalbun Salim, 2005), p. 2

Marriage is also a contract that permits social relations and limits the rights and obligations as well as helping each other between a man and a woman, both of whom are not muhrim.² The aim of a marriage is to form a happy and eternal family based on the belief in the Almighty God. This can be realized if husband and wife understand each other and carry out their respective rights and obligations as an effort to build a family. The obligations between husband and wife must be interpreted reciprocally, which means that the husband's obligations are the wife's rights and conversely, the wife's obligations are the husband's rights.³ If the spouses are not taking purposeful or careless actions, it will not result in a harmonious and peaceful household. One or both parties may be abandoned if this commitment is not fulfilled. To create a happy and tranquil family, husband and wife must take responsibility for meeting each other's needs.⁴

Islam, as a religion that regulates vertical and horizontal affairs, has carefully regulated marriage matters. Marriage is a matter that is scientifically necessary for humans. As a religion that gives grace, Islam must be responsive to human needs. Allah, the Most Beautiful, deliberately created humans in pairs, male and female, as part of the romance of life. So that the romance of life becomes more beautiful and so that the relationship between men and women is able to foster peace, love and affection and peace, Allah has established a sacred bond, namely marriage.⁵

In article 1 of Law no. 1 of 1974 concerning Marriage, defines marriage as a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a family (household) that is eternal and based on God Almighty. Marriage in civil law is defined as a relationship between a man and a woman for a long period of time.⁶

From the formulation of marriage, it is clear that marriage is not only a physical bond or an internal bond, but both. As a birth bond, marriage is a legal relationship between a man and a woman to live together as husband and wife. This birth bond is a formal relationship that is real, both for those who remind themselves and for other people or society. Meanwhile, marriage as an inner bond is a spiritual connection that exists because of the same and sincere desire between a man and a woman to live together as husband and wife. This inner bond is reflected in the

²Tihami and Sohari Sahrani, *Fiqh Munakahat : Kajian Fikih Nikah Lengkap* (Cet. III; Jakarta: Rajawali , 2019), p. 132.

³Soemiyati, *Hukum Perkawinan Islam dan Undang-Undang Perkawinan* (Cet. II; Yogyakarta: Liberty, 1986), p. 96.

⁴Muhammad Talib , *20 Rahasia Ikatan Kejiwaan Suami Isteri* (Cet. I; Bandung: Irsyad Baitus Sala, 2001), p. 46.

⁵Didik Abdullah, *Bila Hati Rindu Menikah* (Yogyakarta: Pro U Media, 2005), p. 23.

⁶Subekti , *Pokok-Pokok Hukum Perdata* (Cet. I; Jakarta: PT Intermasa , 1983), p. 23.

harmony between the husband and wife concerned. The establishment of this inner and outer bond is the basis for forming a happy and eternal family.⁷

The integrity and harmony of the household can be disrupted if the quality of self-control cannot be controlled, which in the end can result in domestic violence resulting in insecurity or injustice towards people within the household.⁸

Allah explains in QS al-Nisaa/4:34.

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ ۗ فَالصَّالِحَاتُ قَنِتَاتٌ حَفِظَتْ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ ۗ وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ ۗ فَإِنْ أَطَعْتَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا
كَبِيرًا

Translation :

*"Men are the caretakers of women, as men have been provisioned by Allah over women and tasked with supporting them financially. And righteous women are devoutly obedient and, when alone, protective of what Allah has entrusted them with. And if you sense ill-conduct from your women, advise them 'first', 'if they persist, do not share their beds, 'but if they still persist,' then discipline them 'gently'. But if they change their ways, do not be unjust to them. Surely Allah is Most High, All-Great."*⁹

The ideal of a married life is to live in harmony, happiness and peace, but the journey of life is not always smooth according to what is expected, sometimes obstacles come early to hit self-confidence and shake the steel walls of conscience so that different views arise in understanding life and quarrels between husband and wife who no longer feel comfortable and at peace with their marriage. In essence, someone who enters into a marriage contract promises each other and is committed to helping each other, appreciating and respecting their partner, so that the desired happiness and ideals are achieved.¹⁰

In al-Misbah's tafsir, it is explained that a husband's position as leader in his family and also explained about a wife's obligation to obey her husband. If it turns out in reality happen nusuz from party wife to husband with No heed mandatory

⁷Riduan Syaharani , *Perkawinan dan Perceraian* (Jakarta: Media Sarana Putra, 1987), p. 12.

⁸Constitution Number 1 of 1974, concerning Marriage and Law Number 23 of 2004 Concerning Removal Domestic violence _ (Cet. I; Jakarta: Visimedia , 2007), p. 68-69.

⁹Ministry of Religion, *the Qur'an and its Translations* (Bandung: Cordoba, 2016), p. 84.

¹⁰Amir Syarifuddin , " Law Number 1 of 1974 concerning Marriage and Regulations Government Number 9 of 1975 and Compilation of Islamic Law" (Jakarta: Ministry of Religion of the Republic of Indonesia: Director General , Community Guidance and Hajj Organizers).

obligations _ fulfilled , then Islam teaches necessary steps _ done by husband as leader For direct wife return to the right way.¹¹

Every married couple certainly hopes to have a family life full of love and happiness. Every family always longs for a safe, comfortable and happy home life. However, it cannot be denied that family life is not only about love and happiness. A husband and wife or even a family can also present complicated conflicts due to misunderstandings or incompatibility between family members. Unresolved conflict can lead to Domestic Violence (KDRT).

Violent behavior is a response to stress faced by a person which is demonstrated by actual behavior of committing violence, either to oneself, to others physically or psychologically. Violent behavior is a situation where a person carries out actions that can cause physical harm, both to himself or others, accompanied by rage and tantrums, uncontrolled anxiety. Violent behavior is a situation where clients experience behavior that can harm themselves, the environment including other people and property. Violent behavior or an act of violence is an expression of feelings by carrying out wrong actions due to loss of self-control due to stressors that become physical and psychological problems that result in danger to oneself, other individuals and the environment.

The National Commission on Violence Against Women recorded that the number of cases of domestic violence in 2020 was 6,480 cases, the most prominent form of violence was physical violence with 2,025 cases ranking first, followed by sexual violence with 1,983 cases, psychological violence with 1,792 cases and economic violence with 680 cases.¹² In 2021 there were 7,435 cases of domestic violence.¹³ And in 2022 there will be an increase of 18,261 cases of domestic violence (KDRT).¹⁴

One of the cases that occurred in 2022 was the case of domestic violence experienced by Lesti. Lesti reported her husband Rizky Billar to the South Jakarta Metro Police on Wednesday evening 29 September 2022 on suspicion of domestic violence (KDRT). In the police report document, it is known that Rizky Billar committed two domestic violence crimes against Lesti at 02.30 and 10.00 on September 28 2022. It is also stated that Billar strangled, pushed and slammed his wife, until it was reported that Lesti was hospitalized after reporting her husband. Lesti also underwent a post-mortem to become evidence for investigators in the

¹¹M. Quraish Shihab, *Tafsir al-Misbah: Pesan, Kesan, dan Keserasian Al-Qur'an*, Volume 2 (Cet. I; Tangerang: Lentera Hati, 2017), p. 426.

¹²Komnas Perempuan, [https://komnasperempuan.go.id/siaran-pers-detail/catahu-2020-komnas-perempuan-lambar-fakta-dan-poin-kunci-5-maret2021#:~:text=3.%20Dari%20sejumlah%208.234%20kasus,79%25%20\(6.480%20kasus\),](https://komnasperempuan.go.id/siaran-pers-detail/catahu-2020-komnas-perempuan-lambar-fakta-dan-poin-kunci-5-maret2021#:~:text=3.%20Dari%20sejumlah%208.234%20kasus,79%25%20(6.480%20kasus),) accessed on January 18, 2023

¹³Data Indonesia, <https://dataindonesia.id/Ragam/detail/indonesia-catat-7435-kasus-kdrt-pada-2021-terbanyak-di-sumut>, accessed on January 18, 2023

¹⁴MetroTV News, <https://www.metrotvnews.com/play/b2lCrdXL-kemenpppa-rilis-data-jumla-h-kas-kdrt-di-indonesia-unjung-oktober-2022>, Accessed January 18, 2023

alleged domestic violence case. The results of the post-mortem concluded that Lesti absolutely experienced domestic violence from Rizky Billar. Lesti received a bruise on the front of her neck accompanied by swelling and pain. Based on the post-mortem results, the bruises were caused by abuse.¹⁵

Based on observations made at the Sungguminasa District Court, data on domestic violence that occurred in 2020 was 3 cases, in 2021 there were 5 cases, and in 2022 there was an increase to 8 cases. From the data obtained, it can be concluded that cases of domestic violence tend to increase every year. This means that law enforcement for perpetrators of domestic violence has not been fully implemented optimally so that the potential for increasing domestic violence is higher as a result of the lack of a deterrent effect for perpetrators of domestic violence.

In order to achieve the desired level of law enforcement, it is necessary to spread knowledge and awareness that domestic violence is illegal in order to create a shared understanding across society. In the absence of this comprehension and cognizance, anticipated law enforcement will be further off. In addition, women need to be willing to go to court in order to be accepted members of society. Realizing how critical it is to end domestic abuse in order to provide victims with a sense of closure, uphold their legal rights, and ensure that cases of domestic abuse are not discounted.

THEORETICAL REVIEW

Violence in the Household (KDRT) According to Constitution Number 23 of 2004 Concerning Removal Violence in the Household (PKDRT)

In the KBBI (the Big Indonesian Dictionary), violence is defined as something that is characterized by violence, someone's actions that will cause physical damage.¹⁶ In Law Number 23 of 2004 concerning the Elimination of Domestic Violence Article 1 number 1 states that Domestic Violence is any act against someone, especially women, which results in physical, sexual, psychological misery or suffering and/or domestic neglect. including threats to commit acts, coercion or deprivation of liberty against the law and within the household.¹⁷

Domestic violence can take the form of physical violence, psychological or emotional violence, sexual violence and economic violence. In the PKDRT Law, acts of domestic violence are regulated in Article 5 and are divided into 4 types, namely: first, physical violence; second, psychological violence; third, sexual violence; and fourth, household neglect. The Law on the Elimination of Domestic Violence is also called psychological violence as in Article 7 of the Law on the Elimination of Domestic Violence which states "Actions that result in fear, loss of self-confidence, loss of

¹⁵Kompas,
<https://www.kompas.com/hype/read/2022/10/14/102203766/rangkuman-case-kdrt-lesti-kej-ora-penetapan-tersangka-rizky-billar-berujung?page=all>, Accessed January 18, 2023

¹⁶WJS Poewadarminta, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 2012), p. 425.

¹⁷Republic of Indonesia, Republic of Indonesia Law Number 23 of 2004 concerning Removal Domestic violence

ability to act, a feeling of helplessness, and/or psychological suffering hard on someone."¹⁸

Mansur Faqih defines "violence" as an assault or invasion of a person's bodily or psychological mental integrity. This definition illustrates violence directed towards both physical and psychological objects. ¹⁹

Violence in the Household (KDRT) According to Islamic Law

Islam does not recognize the term or definition of domestic violence specifically. In fact, Islamic teachings strictly prohibit domestic violence. This is proven by many verses in the Qur'an and Hadith which instruct husbands to treat their wives with good relations.

As Allah's word in QS. al-Nisa/4:19.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرِهًا وَلَا تَعْضُلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا
اتَّيَمُّوهُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيِّنَةٍ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ
تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا

Translation :

"O believers ! It is not permissible for you to inherit women against their will¹ or mistreat them to make them return some of the dowry 'as a ransom for divorce'¹— unless they are found guilty of adultery. Treat them fairly. If you happen to dislike them, you may hate something which Allah turns into a great blessing.²⁰

Another verse explains that one of the purposes of creating wives is to reassure and also create mutual love and affection as Allah SWT. says in QS. al-Ruum/30:21.

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي
ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

Translation :

"And one of His signs is that He created for you spouses from among yourselves so that you may find comfort in them. And He has placed between you compassion and mercy. Surely in this are signs for people who reflect."²¹

¹⁸Republic of Indonesia, Republic of Indonesia Law Number 23 of 2004 concerning Removal Domestic violence

¹⁹Soedjono Dirdjosisworo , *Sinopsis Kriminologi Indonesia* (Jakarta: Gapura Media, 2014), p. 12-13.

²⁰Ministry of Religion, *Al-Qur'an and Translations* , p. 81.

²¹Ministry of Religion, *Al-Qur'an and Translations* , p. 406.

According to Al-Azhar's interpretation, it is stated that man have reason and thought For treat wife with Good . Apart from that, it also emphasizes the issue of affection and protection and that affection is part of protection and protection is part of affection.²²

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 action of a husband who commits physical violence against his wife is a form of crime and an act that is prohibited by the Shari'a because it will cause harm and harm the wife's safety, therefore it is included in the act of jarimah.²³

Resolving Domestic Violence (KDRT)

After the enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, many victims of domestic violence felt that their rights were protected by law. Many victims report the violence that befell them to the authorities with the aim of fighting for their rights to return, especially the right not to be tortured.

In connection with the process of resolving domestic violence where in the PKDRT Law it is stated that physical, psychological and sexual violence in the household is a complaint offense, then in order for a criminal case of domestic violence to be resolved it must be based on the existence of a complaint first. made by the victim or based on a report provided by the victim's family or other person who has power of attorney addressed to the police.

Maqashid Sharia

Maqashid Al-Syariah consists of two words, namely *maqashid* and *Syariah*. The word *maqashid* is the plural form of the singular *maqshid* and *maqshad*, both of which are *mashdar mimi* which have the form *fi'il madhi qashada*.²⁴ Linguistically, *maqashid* has several meanings, including *al-I'timad* (something that is a support), and also *istiqamatu at-tariq* (steadfastness on a path).²⁵

Etymologically, *Maqashid* is the plural form of the word *maqsid*.²⁶ Which is formed from the letters qaf, sad and dal, which means intention or purpose. In the science of sarf, *maqashid* has various meanings, including being defined as a straight or

²²Hamka, Tafsir Al-Azhar: Volume 7 (Cet ; I, Jakarta: Gema Human , 2015), p. 49.

²³Rahmat Hakim, *Hukum Pidana Islam* (Bandung: Pustaka Setia, 2000), p. 17.

²⁴Ahmad Sarwat, *Maqashid Syariah* (Cet. 1; South Tangerang: Rumah Fikih Publishing, 2019), p. 10.

²⁵Abdul Helim , *Maqashid Al-Shariah versus Usul Al-Fiqh* , (Cet. 1; Yogyakarta: Student Library , 2019), p. 8.

²⁶Muhammad Idris al- Marbawiy, *Idris al- Marbawi Dictionary; Arabic- Malay* , Juz I (Bandung: al- Ma'arif , n.d.), p. 136.

focused path, holding fast, being fair, intent and purpose, strong desire, deliberate or intent on something (*qasada ilayh*).²⁷ Meanwhile, the word Sharia linguistically comes from the word *syara 'ayasyra'u syar'an* which means to make *sari'at* or law, explain and state, it is said *syara'a lahum syar'an* means he has shown them the way or means *sanna* which means showing the way or rules.²⁸ From the Arabic dictionary, *shari'ah* means *ad-din, al-millah, al-minhaj, at-thariqah, and as-sunnah*.

Meanwhile, according to the term *Sharia*, these are the rules that have been prescribed by Allah relating to faith and the laws of good deeds (*amaliyah*).²⁹ The word *sharia* in the beginning used For shows water flowing in and out from the source, then used For show need all creature life towards water. The existence of water is very important and is primary needs for life , so For fulfil need This required road or method. Tthat method called *al- shir'ah*.³⁰

RESEARCH METHODOLOGY

Research methods carried out researcher is qualitative Field Research, which entails conducting interviews, documenting events that happen in the field, and deriving various conclusions from all the data gathered. This is done in order to comprehend the phenomena or symptoms that arise from the topic under study and to determine the truth of anything.³¹

FINDINGS

Factors Causing Domestic Violence (KDRT) at the Sungguminasa District Court

Domestic violence at the Sungguminasa District Court tends to increase every year due to many factors behind this occurrence, including:

Communication, is a very important thing in social life. A good communication in society will have a good impact, and vice versa. Communication within the family is very important to maintain family integrity. Without good communication, household life will experience many problems, one of which is domestic violence. Poor communication can lead to divisions in the household. It is better if in the household all problems that occur between husband and wife are discussed carefully and calmly. Several cases of domestic violence that occurred at the Sungguminasa District Court were caused by a lack of communication between the husband or wife when a conflict occurred, which led to acts of violence in the household.

²⁷Mahmud Yunus, *Arabic-Indonesian Dictionary* (Jakarta: Hidakarya Agung, 1990), p. 343.

²⁸Hasbi Umar, *Nalar Fiqih Kontemporer* (Jakarta: Gaung Persada Press, 2007), p. 36

²⁹Muhammad Sa'ad ibn Ahmad ibn Mas'ud al-Yubi, *Maqa ş id al- Shari'ah al-Islamiyah wa ' Alaqatuha bi Adillat al- Shar'iyah* (Riya d : Dar al-Hijrah, 1998), p. 29-30.

³⁰Abdul Helim , *Maqashid Al-Shariah versus Usul Al-Fiqh* , p. 8.

³¹Sugiyono, *Metode Penelitian Pendidikan: Pendekatan Kualitatif, Kuantitatif dan R&D* (Cet.I ; Bandung: Alfabeta, 2010), p. 31.

The researcher's interview with the Sungguminasa District Court Judge, Mr. Wahyudi Said, said that:

*"Usually, there are several causal factors that we have dealt with, the first is misunderstanding, so one of the parties is misunderstanding, sometimes they are provoked by another conversation, someone says that her husband is cheating, then the husband hears that his wife is outside with another man, well, this is without communicating it first. OK, finally domestic violence happened."*³²

In the Maqashid Syariah perspective, communication that is not established well can disrupt the maintenance of a person's soul and mind because when communication is not established well it can have a bad impact on a person's psychology and mental state, such as being afraid to express his opinion so that he just keeps it bottled up and creates a weak understanding between husband and wife.

Based on the results of the interview, it can be concluded that communication within the household is very important when a problem or misunderstanding occurs so that the existing problem can be resolved properly to avoid violence in the household.

A person's character or behavior factors, parents and the surrounding environment play an important role in building a person's character. When you are used to living in a harsh environment, getting used to violence will create a bad person. This also has an influence on the self or character of someone who cannot control their emotions when a problem occurs in their household. A person's behavior can cause domestic violence for both the perpetrator and the victim. Behavioral factors here are bad habits that someone does.³³

According to the hifdz al-aql principle, this element may negatively affect a person's mental state, impairing their capacity for thought and making it difficult for them to appropriately regulate their emotions. Aside from that, it is expressly forbidden by Islamic law to engage in activities that could endanger someone's mental health.

The jealousy component, specifically the husband and wife's excessive jealousy, can lead to chaos in the home. Domestic violence can arise from conflicts between a husband and wife who are afraid of having an affair.³⁴

Caring for the soul is a form of benefit which aims to ensure the well-being of human life. Excessive jealousy between husband and wife in the household can cause harm

³²Wahyudi Said (46 years old) Judge at Sungguminasa District Court Class 1A, District Gowa , *Interviewed* on November 09 2022.

³³Ristanti Rahim (45 years old) Sungguminasa District Court Judge Class 1A, District Gowa , *Interviewed* on November 10, 2022.

³⁴Ristanti Rahim (45 years old) Sungguminasa District Court Judge Class 1A, District Gowa , *Interviewed* on November 10, 2022.

to the soul because of the loss of trust in the household, giving rise to a conflict which does not rule out the possibility of resulting in divorce.

Interview with Sungguminasa District Court Judge Mrs. Ristanti Rahim, said that:

*"In fact, domestic violence occurs because of many factors, such as individual personalities, sometimes they are not compatible, sometimes the characteristics of the partner are not the same and they don't like it, the husband's character is tough, there is also the jealousy factor, for example because he likes someone else or the presence of a third party. , there is also a habit of drinking. But the most dominant factor that occurs is due to economic factors in the household."*³⁵

Economics from a maqashid sharia perspective can disrupt hifdz al-mal in the household sphere. This economic factor can cause neglect in the household when a husband cannot provide adequate living for his family even though it is a husband's obligation to ensure the survival of the family in his household.

Based on this interview, the author draws the conclusion that domestic violence is caused by many factors, one of the factors that greatly influences the occurrence of domestic violence is economic factors because needs cannot be met optimally.

Women and men who marry at a relatively young age. Marrying at a young age has a tendency to be irresponsible for the future of one's marriage. So it can be said that someone who marries at a young age does not have a strong attachment to their future. Psychologically, it can be said that they are not ready or unable to take responsibility for their family. They still cannot control their emotions well, so when an argument occurs, the husband usually does not hesitate to hit his wife.³⁶

Getting married at a relatively young age can influence the principles of *hifdz nafs*, *hifdz nasl*, and *hifdz al-aql*. Married at a young age is considered to not have the ability to run a household because it is feared that they will not be able to fulfill the obligations that must be carried out in life as husband and wife.

A wrong understanding of religious teachings regarding how to educate a wife, the wife's obedience to her husband, respect for the husband's position as head of the family, gives rise to the perception that the husband can control the wife and results in the husband being arbitrary towards the wife.³⁷

This wrong understanding of religious teachings from the perspective of *maqashid Sharia* is contrary to the concept of caring for the soul, in this case a husband who acts arbitrarily towards his wife is a discriminatory act that leads to the weakened

³⁵Ristanti Rahim (45 years old) Sungguminasa District Court Judge Class 1A, District Gowa, *Interviewed on November 10, 2022.*

³⁶H. Syahbuddin (45 years old) Sungguminasa District Court Judge Class 1A, District Gowa , *Interviewed on November 10, 2022.*

³⁷H. Syahbuddin (45 years old) Sungguminasa District Court Judge Class 1A, District Gowa , *Interviewed on November 10, 2022.*

party. However, in domestic life, a husband is obliged to provide protection, guidance and good treatment to his wife.

Excessive emotional factors or the harsh nature of one of the parties, whether husband or wife, causes frequent beatings by the husband or wife against one of them, causing pain.

Interview with Sungguminasa District Court Judge Mr. H. Syahbuddin, said that:

"Some of the factors that I have seen are due to economic factors, also sometimes due to competition between husband and wife, then the habitual factor of the person who likes to be rude or hit, and sometimes also the factor of marrying young who is not yet mature in thinking and not being able to control his emotions well, and also the factor of a lack of understanding of religion in living one's domestic life can result in domestic violence."³⁸

Based on this interview, it can be concluded that getting married at a young age can be a factor in the occurrence of domestic violence because they cannot control their emotions when a conflict occurs in their household. Lack of understanding of religion can also be a factor in domestic violence because the husband or wife does not know their rights and obligations so that the husband or wife behaves arbitrarily and does not appreciate and respect each other, resulting in domestic violence.

The Efforts to Resolve Domestic Violence (KDRT) at the Sungguminasa District Court

Efforts to resolve domestic violence (KDRT) at the Sungguminasa District Court in principle follow the criminal procedural law system as regulated in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) starting from investigation, prosecution, trial and correctional services. The judge's basis for handing down criminal decisions against perpetrators of criminal acts of domestic violence is based on the law which specifically regulates domestic violence, namely Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT), which has also been written down in full, related to regulations governing both perpetrators, victims and witnesses.

Based on the researcher's interview with the Sungguminasa District Court Judge, Mr. Wahyudi Said, he said that:

"The process of resolving domestic violence cases in the District Court follows criminal procedural law, so domestic violence is included in the scope of criminal cases. The efforts made by the panel of judges are mediation so that there is peace between them with the hope that after the case is finished they will be able to return to harmony, that is the aim because for domestic violence itself, it is the same as an ordinary criminal case when it goes to court, it is different from restorative justice. Even though the

³⁸H. Syahbuddin (45 years old) Sungguminasa District Court Judge Class 1A, District Gowa, *Interviewed on November 10, 2022.*

settlement process follows criminal procedural law, in passing the decision the legal basis used by the judge is in accordance with the PKDRT Law."³⁹

Same thing was also said by Mr. H. Syahbuddin, Judge of the Sungguminasa District Court , that :

*"Efforts to resolve this are in accordance with the criminal procedure law. When the case has been registered or transferred by the public prosecutor (JPU) to the district court, the court must automatically examine, judge by reading the indictment and examining the witnesses in accordance with the criminal procedure law. Even if later the defendant and victim reconcile, that will be a reason to make things easier for the defendant or perpetrator."*⁴⁰

Based on this interview, it can be concluded that the resolution of domestic violence cases is carried out in accordance with criminal procedural law, namely by conducting examinations or investigations, prosecutions and trials in court.

Before entering the trial stage, the panel of judges first mediates the defendant and victim using a restorative justice model, namely penal mediation. Penal mediation is an alternative to prosecution that provides the possibility of a negotiated settlement between the perpetrator of the crime and the victim. It can be understood that handling criminal cases using penal mediation is aimed at finding the right solution desired by the parties (perpetrator and victim). In penal mediation, the court acts as a mediator using the consensus model, namely a model that emphasizes dialogue between disputants to resolve the problem.⁴¹ This concept prioritizes the integration of perpetrators and victims or society as one unit to find solutions and return to a pattern of good relations between perpetrators of criminal acts so that in the future the relationship between the two can return to harmony when the case is finished.

When a case is submitted by the public prosecutor and has been registered with the District Court, the first thing to do is give the case to the Chairman of the Court to decide on the panel of Judges appointed by the Chairman of the Court in the case. The panel of judges receives the case and reads the case and the panel of judges always tries to mediate the domestic violence case. Usually mediation is carried out by bringing in victims, defendants, a panel of judges, public prosecutors, legal aid and fathers to resolve cases outside of court.

Cases that can be mediated are no longer continued in district court and a decision letter is immediately made on the case, but when the case is not successfully mediated, the case is continued in court and follows the court process until the panel

³⁹Wahyudi Said (46 years old) Judge at Sungguminasa District Court Class 1A, District Gowa, *Interviewed on November 9, 2022.*

⁴⁰H. Syahbuddin (45 years old) Sungguminasa District Court Judge Class 1A, District Gowa, *Interviewed on November 10, 2022.*

⁴¹Mudzakir and Lilik Mulyadi, " Mediasi Penal dalam Sistem Peradilan Pidana Indonesia: Pengkajian Asas, Norma, Teori, dan Praktik", *Journal Yustitia* , Edition 85 (2013), p. 6.

of judges gives a decision. The decision that can be given by the panel of judges is seen from the condition of the defendant and the defendant's behavior during the district court process in court, so the decision given does not burden the defendant and the defendant can be sent home to his family and can improve his behavior and can become even better and not involved a second time with another crime.

As for the trial process at the Sungguminasa District Court, namely in the criminal case trial process, the indictment is first read by the Public Prosecutor (JPU). The indictment for the defendant serves to determine the extent to which the defendant was involved in the trial. By understanding the indictment made by the prosecutor, the indictment is the basis for the defendant's defense. Meanwhile, for the judge, it is the material (object) of the trial examination which will provide a pattern for the court decision that will be handed down.

After reading the indictment, an exception was made. Exceptions are objections raised by the defendant and/or his legal advisor. The exception made by the defendant's legal advisor usually plays a role in making an interim measure by the judge examining the case. The interim measure in question is not a final decision, where the interim measure is valid until a more binding decision is made.

In the event that an interim decision is made, the prosecutor can immediately submit the case to the court determined to have the authority to try. Meanwhile, if the interim interim measure contains a rejection of the exception, the judge will continue the case by ordering the prosecutor to immediately submit the evidence. However, if the interim measure is in the form of a final decision then the efforts that can be made by the prosecutor are to carry out a verzet, appeal or cassation based on the contents of the decision.

However, if the defendant or his legal advisor does not submit an exception, objection or response to the indictment, the trial will continue with the evidentiary stage. In criminal procedural law, evidence is the central point in the examination of cases in court. Evidence is provisions that contain outlines and guidelines regarding methods permitted by law to prove the guilt of the accused. Evidence is also a provision that regulates evidence permitted by law that the judge may use to prove the defendant's guilt.

So, in determining whether the person accused is guilty or not, his guilt must be proven with at least two types of evidence as stated in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP) article 183 which states that the judge may not impose a crime. to a person unless, with at least two valid pieces of evidence, he is convinced that a criminal act has actually occurred and that the defendant is guilty of committing it.⁴²

From an Islamic legal perspective, there is no specific term or definition of domestic violence. In fact, Islamic teachings strictly prohibit domestic violence. This is proven by many verses in the Qur'an and Hadith which instruct husbands to treat their

⁴²Republic of Indonesia, Law Number 8 of 1981 concerning Criminal Procedure Law

wives with good relations. Islam is rahmatan lil'alamin which adheres to the principles of equal partnership (cooperation) and justice. The purpose of marriage is to achieve a sakinah, mawaddah and rahmah family. Therefore, all actions that give rise to the mafsadat consequences contained in domestic violence can be categorized as unlawful acts.

In the household there must be a feeling of love (mawaddah) and affection (rahmah). The feeling of love and affection can be seen from how the head of the household treats his family. For example, if there is a child who commits nusyuz, he goes against his parents. His parents told their child to pray, but the child didn't want to because he was playing with his friends. Then his parents advised him. After being advised, the child also continued to fight against his parents. Then the parents hit their child, so he felt sick. Because of the blow, fear arose which resulted in him not repeating his mistake again.

Islam views the position of women and men as equal because in essence all humans have the same level of humanity. There is no advantage of one over another due to their ethnicity, race, class, religion or gender. According to Islam, the value of human nobility lies solely in his piety. However, based on awareness of the differences between the two, both regarding physical and psychological matters, Islam then differentiates the two in several issues, especially those concerning the function and role of each. . This distinction can be categorized into two things, namely in family life and public life.

According to this rule, humans must be kept away from ihrar (acts of harm) both by themselves and others, and they should not cause harm or harm to other people. This rule also explains that a person is not permitted to carry out actions that could harm themselves and others physically, honor and property. Just as it is also not permissible to return damage for damage with the same damage, this means that it is not permissible to return harm for harm. If there is something that can harm other people, it must be prevented as much as possible, because this damage must be removed or removed from human life.

The prohibition on doing harm in the Qur'an is explained in two general words. The first is *al-dharar* and *al-dzulm*.⁴³ This is implemented in Islamic teachings in QS al-Baqarah/2:231:

وَلَا تُمَسِّكُوهُنَّ ضِرَارًا لِّتَعْتَدُوا ۚ وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ ۗ

Translation :

"But do not retain them 'only' to harm them 'or' to take advantage 'of them'. Whoever does that surely wrongs his own soul. ..."

The verse above explains that husbands are given the choice to reconcile or divorce. He explains in this verse the final limit of that choice, while implying that reconciliation is

⁴³M. Quraish Shihab, *Tafsir Al-Misbah; Pesan, Kesan dan Keserasian al-Qur'an*, vol. 2, p. 498.

the best.⁴⁴ Apart from that, husbands are prohibited from *al-imsak* (holding back) their wives for the purpose of *al-idrar* (bringing harm to others). This shows the simple principle of Islam in marriage which prohibits hurting each other. In fact, not only that, if you reject your wives or it would be better for them to continue the relationship, then reconcile them in a *ma'rûf* way, namely in a good way according to religious and customary guidelines. And another option is to divorce them in a peaceful way. By divorcing, don't expose your mistakes or bad things so that it will have bad consequences for you.

The aim in understanding *maqashid sharia* is to understand the sharia texts, then implement them into new or applicable problems and make arguments for the laws found for existing problems. Then, by understanding the *maqashid sharia*, it can help Muslims to know that all the laws that have been determined by Allah SWT, are solely to provide goodness or *maslahah* and keep away harm or *mafsadah* for them.

CONCLUSIONS AND IMPLICATIONS

Conclusion

Factors that cause domestic violence are influenced by many factors, including poor communication between husband and wife, a person's character or behavior, jealousy, excessive jealousy on the part of the wife or husband, economic factors, the needs of the household. cannot be fulfilled optimally, women and men marry at a relatively young age, a wrong understanding of religious teachings, excessive emotional factors or a harsh nature on the part of either husband or wife and competition between husband and wife occurs due to inequality between the two to fulfill each other's desires. Efforts to resolve domestic violence are carried out by following the criminal procedural law system as regulated in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) starting from investigation, prosecution, trial and correctional.

Research Implications

Parties who care about the protection of victims of domestic violence or related agencies need to improve their performance in providing education and outreach to various levels of society regarding Law Number 23 of 2004 concerning the Elimination of Domestic Violence. So that women do not become the majority of victims of domestic violence, they are expected to know about their rights and obligations as wives. Apart from that, victims of domestic violence, most of whom are women, must also be braver in telling and reporting about violent crimes that befell them, and no longer view domestic violence as a disgrace to the family that must be covered up.

⁴⁴M. Quraish Shihab, *Tafsir Al-Misbah; Pesan, Kesan dan Keserasian al-Qur'an*, vol. 2, h. 499.

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