

## **Pekanbaru City Regional Regulation No. 2 of 2023 on the Protection of Women and Children from the Perspective of Islamic Family Law**

**Ahmad Fauzi\*<sup>1</sup>, Jumni Nelli<sup>2</sup>, Johari<sup>3</sup>, Hendri Kori<sup>4</sup>, Ahmad Zikri<sup>5</sup>, Rahman<sup>6</sup>**

Universitas Islam Sultan Syarif Kasim Riau, Indonesia<sup>1,2,3,4,5,6</sup>

Email: [ahmadfauzi@uin-suska.ac.id](mailto:ahmadfauzi@uin-suska.ac.id)<sup>1</sup>, [jumni.nelli@uin-suska.ac.id](mailto:jumni.nelli@uin-suska.ac.id)<sup>2</sup>,

[196403201991021001@uin-suska.ac.id](mailto:196403201991021001@uin-suska.ac.id)<sup>3</sup>, [hendrika@uin-suska.ac.id](mailto:hendrika@uin-suska.ac.id)<sup>4</sup>,

[azikrihassan@gmail.com](mailto:azikrihassan@gmail.com)<sup>5</sup>, [rahman@uin-suska.ac.id](mailto:rahman@uin-suska.ac.id)<sup>6</sup>

### ***Abstract***

This study aims to explain Pekanbaru City Regional Regulation No. 2 of 2023 regarding the Protection of Women and Children in order to provide protection and prevent violence against women and children within Islamic families. Islam views women and children as gifts from Almighty God, who must be protected as they possess inherent dignity, honor, and rights as human beings that must be upheld. The protection of women and children from acts of violence is intended to guarantee and protect their rights so that they can live in peace, grow and develop, and participate optimally according to human dignity and worth. This research is a library study and is also confirmed through field data using a qualitative approach and juridical sociological analysis techniques. The primary source of data is the Regional Regulation (Perda), while secondary materials include books related to Islamic Family Law. Tertiary legal materials consist of legal norms, Arabic and English dictionaries, and documents deemed important to this research. The findings show that the existence of Pekanbaru City Regional Regulation No. 2 of 2023 is a response to several issues of domestic violence experienced by women and children in households, viewed from philosophical, sociological, and juridical foundations.

***Keywords:*** Regulation No. 2 of 2023, Women and Children, Islamic Family

### ***Abstrak***

Penelitian ini bertujuan untuk menjelaskan Peraturan Daerah Kota Pekanbaru Nomor 2 Tahun 2023 tentang Perlindungan Perempuan dan Anak dalam rangka memberikan perlindungan dan mencegah terjadinya kekerasan terhadap perempuan dan anak dalam keluarga Islam. Islam memandang perempuan dan anak sebagai anugerah Tuhan Yang Maha Esa yang wajib untuk dilindungi karena memiliki harkat, martabat, dan hak asasi manusia yang harus dijunjung tinggi. Perlindungan terhadap perempuan dan anak dari tindak kekerasan dimaksudkan untuk menjamin dan melindungi hak-haknya agar dapat hidup tenteram, tumbuh dan berkembang, serta berpartisipasi secara optimal sesuai dengan harkat dan martabat kemanusiaan. Penelitian ini merupakan penelitian kepustakaan dan diperkuat pula melalui data lapangan dengan menggunakan pendekatan kualitatif dan teknik analisis yuridis sosiologis. Sumber data primer adalah Peraturan Daerah (Perda), sedangkan

bahan hukum sekunder meliputi buku-buku yang berkaitan dengan Hukum Keluarga Islam. Bahan hukum tersier terdiri dari norma-norma hukum, kamus bahasa Arab dan bahasa Inggris, serta dokumen-dokumen yang dianggap penting dalam penelitian ini. Hasil penelitian menunjukkan bahwa keberadaan Peraturan Daerah Kota Pekanbaru Nomor 2 Tahun 2023 merupakan respon terhadap berbagai permasalahan kekerasan dalam rumah tangga yang dialami oleh perempuan dan anak dalam rumah tangga, dilihat dari landasan filosofis, sosiologis, dan yuridis.

**Kata Kunci:** Peraturan Nomor 2 Tahun 2023, Perempuan dan Anak, Keluarga Islam

## INTRODUCTION

The purpose of Islamic law, as revealed by Allah SWT, is for the *maṣlaḥat* (benefit and welfare) of humanity, and to protect them from harm and destruction in both this world and the hereafter. (Daud A, 1993) This purpose, which encompasses both worldly and afterlife matters, distinguishes Islamic *shari'ah* from man-made laws. This is because human-made regulations only govern worldly life, whereas Islamic *shari'ah* aims to bring about *maṣlaḥat* and protect people from anything that could harm them, both in this world and the hereafter (Daud A, 1993 p. 53)

One of the objectives of *shari'ah* in the family is to protect individuals from various forms of injustice that may arise in both household life and society. In the development of Islamic law from its early phase during the time of the Prophet (PBUH), the realm of Family Law emerged in two forms. The first was to respond to and reconstruct Family Law that did not align with justice values, as practiced in the era of pre-Islamic Arabia or what was considered part of Arab culture, such as the case of *ẓihar* and the inheritance distribution that denied the rights of female heirs. These practices were done according to the prevailing customs in Arab lands. The second form was Family Law directly regulated through divine revelation, such as the obligations of maintenance (*naḥkah*), child custody (*ḥaḍānah*), and adoption, in accordance with the will of the *shari'ah* giver.

The scope of Family Law, according to Muhammad Az-Zarqa, as quoted by Muhammad Amin Suma, essentially consists of three subsystems of law: marriage (*al-munākahāt*), guardianship and wills (*al-walāyah wa al-waṣāyah*), and inheritance (*al-mawārits*). (Supreme Court of the Republic of Indonesia, 2011) Compared to Family Law in Western perspectives, Western law tends to emphasize individual rights, referred to as *personal law*. In modern times, many Islamic countries have a broader Family Law system, encompassing *personal law*

as well as *family law* (*qanūn al-usrah*) and *family rights* (*huqūq al-ilah*), which include marriage (*zawāj, izdiwāj*), inheritance (*mīrats, mawārits*), wills (*waṣiyyah, waṣāya*), and endowments (*waqf*). Therefore, the realm of Family Law has experienced dynamic development depending on the legal system adopted by a country (Khoirudin, 2007). The word "family" itself refers to the smallest unit in society, consisting of a husband and wife, or a husband, wife, and their children, or a father and children, or a mother and child(ren), or blood relatives in a direct line up or down to the third degree. (Article 1 (3) of Law Number 23 of 2002)

The National Legal System further emphasizes that National Law consists of three components: legal substance, legal structure (including law enforcers, police, and prosecutors), and legal culture, which refers to the public's legal awareness. Legal substance is better known as legislation. Legislation refers to written regulations established by state institutions or authorized officials and is generally binding.

In general, the limitation of the content of Regional Regulations (*Perda*) is higher-level legislation and public interest. Regional Regulations must not contradict the public interest and/or higher laws and regulations. Regional Regulations must have limited content, meaning that they must not include content that is within the jurisdiction of the central government. The content of city/regency-level Regional Regulations must not govern matters within the province's jurisdiction, and the content of provincial-level Regional Regulations must not govern matters under the jurisdiction of city/regency-level governments. Furthermore, Regional Regulations must not regulate technical matters that should be governed by mayoral or gubernatorial regulations (Amiroeddin Syarif, 1987). The position of Regional Regulations has been increasingly clarified and recognized as part of the hierarchy of laws and regulations applicable in Indonesia, as stipulated in Article 7, paragraph 1 of Law No. 12 of 2011 on the Formation of Legislation. However, the scope of Regional Regulations is limited by the provisions of Article 1, number 25 of Law No. 23 of 2014 on Regional Government, which defines Regional Regulations as provincial and/or city/ regency-level regulations. Further provisions regarding Regional Regulations are governed by Article 242 of Law No. 23 of 2014.

As a form of legal politics and legislative implementation within the scope of Family Law, the creation of a Regional Regulation in Pekanbaru City emerged as a consensus between the Pekanbaru City DPRD, the Pekanbaru City

Government, community leaders, and academics. In this framework, the author states that the DPRD in Pekanbaru has also carried out various functions related to legislation, budgeting, and supervision.

The Regional Regulation in question is Pekanbaru City Regional Regulation No. 2 of 2023 on the Protection of Women and Children. This regulation covers family matters, the obligations and responsibilities of the local government, women's and children's rights, special rights for people with disabilities, improving the quality of life for women in the region, and state protection for women and children.

The implementation of the activities outlined in the above regulation is carried out by the Pekanbaru City Women's Empowerment and Child Protection Office in handling cases and preventing crimes and violence against women and children. The office also creates programs aimed at protecting and preventing violence that could befall women and children, while addressing the obstacles faced in their operations. (Disya Anggreni, Ricky Fredy Simanjuntak's, 2021)

The position of Regional Regulations (*Perda*) has been increasingly clarified and recognized as part of the hierarchy of laws and regulations applicable in Indonesia, as stipulated in Article 7, paragraph (1) of Law No. 12 of 2011 on the Formation of Legislation. However, the scope of Regional Regulations is limited by the provisions of Article 1, number 25 of Law No. 23 of 2014 on Regional Government, which defines Regional Regulations as Provincial and or City/Regency Regulations. Further provisions regarding Regional Regulations are governed by Article 242 of Law No. 23 of 2014.

As a form of legal politics and legislative implementation within the scope of Family Law, the creation of a Regional Regulation in Pekanbaru City emerged as a consensus between the Pekanbaru City DPRD, the Pekanbaru City Government, community leaders, and academics. In this framework, the author states that the DPRD in Pekanbaru has also carried out various functions related to legislation, budgeting, and supervision.

The Regional Regulation in question is Pekanbaru City Regional Regulation No. 2 of 2023 on the Protection of Women and Children. This regulation covers family matters, the obligations and responsibilities of the local government, women's and children's rights, special rights for people with disabilities, improving the quality of life for women in the region, and state protection for women and children.

The implementation of the activities outlined in the above regulation is carried out by the Pekanbaru City Women's Empowerment and Child Protection Office in handling cases and preventing crimes and violence against women and children. The office also creates programs aimed at protecting and preventing violence that could befall women and children, while addressing the obstacles faced in their operations.

To ensure that the administration of local government is conducted in accordance with the spirit of legislation, the DPRD has the authority to supervise the implementation of Regional Regulations (*Perda*), other laws and regulations, as well as decisions that are not part of legislation as mentioned in the Law on the Formation of Legislation. This supervision is functional in nature because, alongside direct oversight, the government has the authority to examine whether Regional Regulations or decisions made by the Regional Head contradict the public interest or other laws and regulations. (Moh. Kusnadi and Harmaily Ibrahim, 1985). This repressive oversight authority is regulated in Article 114, paragraph (1) of Law No. 22 of 1999. (Ni'matul Huda, 2011)

## RESEARCH METHOD

This study is a library research (*library research*) which is also confirmed through field data using a qualitative approach and employing sociological-legal analysis techniques. To find answers to the research problems, the author uses primary data sources, namely various regulations (legal) of the Regional Regulations (*Perda*). The primary legal materials include interviews about the Protection of Women and Children in Article 10, as well as the rules contained in the Regional Regulations (*Perda*) of Pekanbaru City. Secondary materials consist of books related to Islamic Family Law, such as the Qur'an, Hadith, *Fiqh Sunnah* by Sayyid Sabiq, *Fiqh Islam wa Adillatuh* by Wahbah Zuhaili, *Bidayatul Mujtahid wa Nihayatul Muqtaashid* by Ibn Rushd, *Ushul Fiqh* by Abdul Wahab Khalaf, and others. Tertiary legal materials include legal norms, Arabic and English dictionaries, and documents deemed important in this research.

The data obtained is then categorized based on information acquired indirectly through secondary data, namely literature related to the author's research and the necessary documents. The data is analyzed using qualitative descriptive methods, which are used to uncover the broadest possible knowledge

about the research object at a given time, based on experiences in the research, to provide a detailed explanation of the phenomenon being studied.

Conclusions in this research are drawn using the inductive method as an analytical approach, moving from inductive to deductive reasoning—where the inductive categories found are then directed toward deductive categories. The results of this research are derived from interviews combined with the necessary documentary data.

## RESEARCH FINDING AND DISCUSSION

### Theory of Islamic Family Law (*Aḥwāl Syakhṣiyyah*)

Family law holds an essential position in Islam. It is considered the core of Sharia (Nasaruddin Umar, 1999). This is related to the assumption of Muslims who view family law as the gateway to a deeper understanding of Islam. Essentially, nothing can be established without something foundational to support it, just as Islamic family law would not exist without its underlying principles. This discussion is important because not all people in Indonesia are Muslim, making the history, events, and reasons behind the birth of Islamic family law seem controversial to some.

Law is definitively defined as Allah's decree relating to the actions of a *mukallaf* (someone legally accountable under Islamic law), whether it takes the form of a command (*iqtidā'*), a freedom to choose an action (*takhyīr*), or a legal ruling (*qaḍā'*). As for family, it is operationally defined as a specific structure in which members are interconnected, whether through blood ties or marriage. These bonds create a sense of "mutual expectation" that aligns with religious teachings, reinforced by legal authority and emotional ties between individuals. (Hammudah, 1984)

In the Indonesian Dictionary (Kamus Besar Bahasa Indonesia), family is defined as parents and their children. Some views state that family is a group of individuals who share a sense of identity and bond with each other. Despite differences in wording, the general understanding of family is that it is an institution comprising a man and a woman united by an agreement to live together. When connected to Islam, the definition of an Islamic family is an institution consisting of a man and a woman who live together, beginning with a marriage that is valid according to Islamic law. All family development rules are

based on Islamic law, whether related to faith (*aqidah*), morality (*akhlaq*), worship, or social interactions (*muamalah*).

A family structure built on mutual agreement to live together without a lawful marriage according to Islam cannot be considered an Islamic family. Likewise, if the marriage contract is limited by time, such as in a temporary marriage (*mut'ah*) or a contract marriage, it cannot be regarded as a valid marriage, nor can it be deemed an Islamic family. This is because the Prophet Muhammad once permitted *mut'ah* marriage during the conquest of Mecca, but it was later prohibited until the Day of Judgment.

Based on the aforementioned definitions, it can be briefly concluded that family law is the decree of Allah SWT, derived from the Qur'an and Sunnah, concerning family bonds, whether through blood relations or marriage, which must be adhered to by every *mukallaf*.

### **Islamic Law as an Essential Element in the Formation of National Law**

Islamic law is a representation of Islamic thought, the most distinctive manifestation of the Islamic worldview, and the essence of Islam itself. The term *fiqh*, meaning knowledge, signifies that from the outset, Islam regarded the knowledge of 'sacred law' as the preeminent form of knowledge. While *kalam* (theology) never attained the same status within Islam, and only *tasawwuf* (mysticism) managed to rival the influence of law in Islamic thought, Islamic law often proved dominant. (Joseph Schacht, 2010) Even today, the discussion of law (in a narrow sense) remains a significant, if not the most important, element in the ongoing struggle within Islam between traditionalism and modernism, particularly under the influence of Western ideas. Furthermore, the entirety of Muslim life, Arabic literature, and the Arab-Islamic scholarly tradition have been profoundly shaped by these ideas. Hence, it is impossible to understand Islam without understanding Islamic law (Joseph Schacht, 2010).

In analyzing the role of Islamic law in the development of national law, several phenomena can be observed in practice. First, Islamic law fills the legal void in positive law. In this regard, Islamic law is enacted by the state as positive law for Muslims. Second, Islamic law serves as a source of values that contribute to the legal rules established. Because these legal rules are general and not religion-specific, the values of Islamic law can also apply to all citizens (Amrullah Ahmad, et al.,1996).

Islamic law, as a 'sacred law,' is fundamentally not irrational. It is not created through an irrational process of continuous revelation, but through a method of rational interpretation, religious standards, and moral rules introduced into a framework that provides the structure for its governance. On the other hand, its formal legal character is less developed because it aims to provide concrete material norms rather than impose formal rules through competing interests.

Islamic law has a clear personal and individualistic nature. It encompasses a comprehensive set of personal rights and obligations for individuals. Islamic law represents an extreme case of 'jurists' law,' created and developed by independent legal scholars. In this system, legal science, rather than the state, plays the role of a legislator, and scholarly manuals possess legal authority. This is made possible by the successful claim that Islamic law is grounded in divine authority (Joseph Schacht, 2010).

### **The History of Islamic Law in Indonesia**

In the history of law in Indonesia, Islamic law has experienced fluctuations, especially during the Dutch colonial period. During this time, efforts were made to gradually eliminate Islamic law in Indonesia, particularly after Snouck Hurgronje introduced his *receptie* theory, which sought to diminish the role of Islamic law by juxtaposing it with *adat* law (customary law) (Abdul Manan, 2006). However, these efforts failed, and to this day, Islamic law remains significant, contributing greatly to the formation of national law. Islamic law has become a source of national law, alongside customary law and Dutch law.

In Muslim-majority countries, particularly Indonesia, which is known globally as having the largest Muslim population, family law has undergone various reforms, including amendments and the creation of new regulations. These reforms aim to ensure the welfare and protection of the people. A concrete example of this can be seen in matters related to the registration of marriages and divorces.

In Indonesia, marriage regulations are governed by Law No. 1 of 1974, with its implementing regulation, Government Regulation No. 9 of 1975, which serves as the material law on marriage. Meanwhile, the formal law is regulated by Law No. 7 of 1989, and complementary regulations for judges are found in the *Kompilasi Hukum Islam* (Compilation of Islamic Law, KHI).



In its development, Islamic law has been integrated as one of the fundamental sources of national law, alongside customary law and Western law. During the Dutch colonial period, a law known as the *Indische Staatsregeling* S 1855-2 was enacted, which incorporated the legal system of the Dutch East Indies. This regulation clearly accommodated three legal systems: Islamic law, customary law, and Western law. After Indonesia's declaration of independence on August 17, 1945, the National Law continued to be built upon these three legal sources. However, its formation is based on the principles of Pancasila and the 1945 Constitution (Sirajuddin M, 2008)

### **The Position of Islamic Law within the National Legal System**

The position of Islamic law within the National Legal System in Indonesia is equal and parallel to Western Law and Customary Law. Therefore, Islamic law serves as a source for the formation of future National Law alongside other laws that grow and develop within the Republic of Indonesia. Areas of Islamic law that do not require governmental power for their implementation can directly apply based on the constitution. Conversely, areas of Islamic law that need state power for their implementation can apply based on regulations below the constitution (Abdul Gani Abdullah, 1998)

The legal position of Islamic law in Indonesia is supported by two main reasons. First, the philosophical basis provides an extraordinary influence on the birth of Islamic epistemological attitudes, which contribute significantly to the development of worldviews, moral ideals, and legal ideals within the socio-cultural life of the community. Second, the juridical basis can be traced from the historical roots of Indonesia through various eras. Islamic law has consistently been given a place from the pre-independence era to the New Order and the Reform Era, although the percentage of its application has varied over time.

Islamic law, as a legal order adhered to and followed by the majority of the Indonesian population, is a part of Islamic teachings and beliefs that exist within the National Legal System. The position of Islamic law in the First Principle of the Pancasila is very strong, as can be found in the 1945 Constitution, Article 29, Paragraph (1), which states: "The state is based on the belief in One Supreme God." This principle serves as a fundamental positive law meant to ensure that the Indonesian people always view and regard this principle as binding in every aspect of personal, social, national, and state life.

In relation to the legal and legal system of Indonesia, it can be understood that religious law is an essential element in the development of National Law. The legal order of the community requires regulations that are compatible with and derived from religious teachings. Islamic law has actually been in effect since the introduction of Islam to Indonesia. As it developed, Islamic law became one of the foundational elements of National Law, alongside Customary Law and Western Law (Sulaikin Lubis, 2005).

Given the significant role of Islamic law in shaping and guiding the social life of Muslims and its influence on all aspects of life, the best approach is to scientifically seek the transformation of Islamic law norms into National Law, as long as they are in accordance with Pancasila and the 1945 Constitution and relevant to the specific legal needs of Muslims. There are many universal principles contained in Islamic law that can be utilized in the formulation of National Law.

In the efforts of national legal development and construction, Islamic law has made substantial contributions, at least in its spirit. This statement is reinforced by Law No. 22 of 1946 on the Registration of Marriage, Divorce, and Reconciliation, which initially applied only to Java and Madura, followed by Law No. 32 of 1954, extending the application of Law No. 22 of 1946 throughout Indonesia. Other laws include Law No. 5 of 1960 on Basic Agrarian Principles, together with Government Regulation No. 28 of 1977 on the Endowment of Land Ownership, Law No. 14 of 1970 on Basic Principles of Judicial Power, amended by Law No. 35 of 1999, and further amended by Law No. 4 of 2004. Law No. 1 of 1974 on Marriage, together with Government Regulation No. 9 of 1975, Law No. 7 of 1992 on Banking, together with Government Regulation No. 72 of 1992 on Banks based on Profit Sharing Principles, Law No. 4 of 1979 on Child Welfare, Law No. 41 of 2004 on Waqf, and the Compilation of Islamic Law (KHI) enacted based on Presidential Instruction No. 1 of 1991, which is currently being considered for elevation to applied law in Religious Courts (Sulaikin Lubis, 2005). Law No. 18 of 2008 on State Sharia Securities, Law No. 21 of 2008 on Sharia Banking, Supreme Court Regulation No. 1 of 2008 on the Compilation of Islamic Economic Law, and Law No. 33 of 2014 on Halal Product Assurance. (Mardani, 2013).

Family Law often becomes a subject of debate between conservative and modernist groups in the Islamic world. Islamic Family Law is particularly

interesting to study because it embodies the divine revelation and the Sunnah of the Prophet. In contrast, other areas of Islamic law have lost this essence due to various reasons, including Western colonialism in Muslim countries (Jazuni, 2005),

According to experts in Indonesian Islamic Law, there are several factors necessitating the reform of Islamic law: First, to address legal gaps where the norms in classical fiqh texts do not apply, while societal legal needs continue to evolve. Second, the influence of economic globalization and technological advancements. Third, the influence of reforms in various fields that provide opportunities for Islamic law to serve as a reference in national law. Fourth, the impact of renewed Islamic legal thinking by both international and national scholars, particularly regarding advancements in science and technology, as well as issues of gender and human rights (Abdul Mannan, *Op ,Cit* , p. 154)

### **Legislation of Regional Regulations (PERDA)**

The authority to establish Regional Regulations (Perda) represents a form of regional autonomy in managing regional affairs or local government matters. Perda is a strategic instrument for achieving decentralization goals. In the context of regional autonomy, Perda plays a crucial role in promoting decentralization to its maximum extent (Reny Rawasita, et.al, 2009). From a political empowerment perspective, decentralization objectives can be viewed from two angles: the Regional Government and the Central Government. The decentralization goals from the Regional Government's perspective are to achieve political equality, local accountability, and local responsiveness. Meanwhile, from the Central Government's perspective, the goals are to foster political education, provide training in political leadership, and create political stability.

Before the amendments, the 1945 Constitution did not recognize Regional Regulations, resulting in their marginalization within the Indonesian legal system. However, following the amendments to the 1945 Constitution, the existence of Regional Regulations has been constitutionally affirmed, as stated in Article 18, Paragraph (6), which reads: "Regional Governments have the right to establish Regional Regulations and other regulations to implement autonomy and delegated tasks." The basis for the DPR's authority to propose Draft Laws is outlined in Article 20, Paragraph (1), which states that the People's Consultative Assembly holds the power to form laws. This is further emphasized in Article 21,

which declares that members of the People's Consultative Assembly have the right to propose draft laws.

Law No. 12 of 2011 on the Formation of Legislation, Article 39, mentions that the planning of Regional Regulation drafts for regencies/cities is conducted within the Prolegda of the regency/city. This implies that the DPRD plays a crucial role in the drafting of Regional Regulations. The drafting of Regional Regulations by the DPRD and the Regional Government is the initial step that will determine the effectiveness and efficiency of the Perda creation process. Perda encompasses all regulations made by local governments to implement higher-order regulations.

Regional Regulations (Perda) serve as an instrument for implementing regional autonomy, setting the direction and policies for regional development, and providing supporting facilities. However, in the evolution of regional autonomy practices, various issues related to the establishment and implementation of Perda have emerged, leading to challenges for the Central Government in overseeing and, if necessary, annulling these regulations. Perda is a unique local product resulting from a process dominated by local political interests (Bagir Manan, 2002).

The establishment of a Regional Regulation (Perda) must include regulations that can be adhered to by the community. To support this, it is crucial to understand the desires and social conditions of the community to ensure long-term applicability. Therefore, the philosophical considerations must be clear about the direction in which the community will be led. To achieve a responsive Regional Regulation supporting Regional Autonomy, drafters should consider the principles of Perda formation as a reference framework, including clarity of objectives, appropriate institutional or organizational structures, and alignment between the type and content of the regulations.

Drafting and establishing Perda is not an easy task; it becomes challenging because Perda will be used as a tool for social transformation and democracy, concretizing the local community's ability to respond to rapid changes and challenges in the current era of autonomy and globalization, contributing to good governance as part of sustainable regional development. Therefore, public participation in the formation of Perda should be integral to enhancing the task and function of government in building public trust.

Through public participation, community aspirations can be gathered and accommodated so that the drafting of Perda involves not only the legislative and executive branches but also allows for public input to produce high-quality Perda. Ultimately, this ensures that the benefits of Perda are felt by the community itself. In the Perda formation process, the vision, mission, and values should align between the objectives of creating the Perda and the desires of the community to improve their welfare. From the outset, the Perda should be designed to meet the needs of the region effectively.

### **Legal Review of Islamic Family Law in Relation to Regional Regulation No. 2 of 2023 on the Protection of Women and Children**

In the past two decades, gender equality has been widely discussed across various parts of the world, including Indonesia. This trend seems to be linked to the rising awareness among women seeking equal rights with men in various aspects of life, including participation in public and political spheres traditionally dominated by men. Issues of injustice manifesting as the marginalization and subordination of women in various sectors of life, even extending to violence against women, are prominent.

Injustice against women often begins in the household, in the form of discrimination where male family members are prioritized over female members. For instance, education for boys is typically prioritized over girls, based on the assumption that girls will eventually be confined to domestic roles (Nasaruddin Umar, 2001). Gender bias also appears in family decision-making processes, which usually exclude women. Domestic violence, including physical assault by husbands against wives and children, is a common occurrence. Thus, it can be assumed that manifestations of gender injustice start within the family environment.

With Indonesia's ratification of various international agreements, there is a commitment to ensuring that steps, including law-making and enforcement, will be undertaken to prevent discrimination against women. This is further supported by the enactment of Law No. 23 of 2004 on Domestic Violence (KDRT). However, despite these legal frameworks, many Indonesian women continue to face injustices across various sectors, including within their own families. Research indicates that from 2005 to the present, domestic violence has

been predominantly represented by acts of domestic violence (KDRT). Clearly, the family is a fertile ground for violence against women and other forms of gender imbalance. This situation necessitates a deeper examination, including an assessment of the existing family law regulations in Indonesia. It is crucial to evaluate whether these regulations sufficiently provide access, empowerment, opportunities, and equal positioning for women compared to men.

Recent data from Komnas Perempuan (the National Commission on Violence Against Women) reveals concerning trends. In 2019, 11,105 cases of domestic violence were reported. In 2020, during the COVID-19 pandemic, the number increased significantly to 13,455 cases (Rohaeni, 2024). By 2021, cases surged to 16,286, attributed to prolonged lockdowns exacerbating tensions within households. In 2022, a slight decline to 14,321 cases was observed, but this number remains alarmingly high. As of mid-2023, 8,412 cases had been recorded, indicating persistent challenges (Sahertian, 2023).

In terms of family law in Indonesia, an important evaluation is needed to assess whether existing regulations actually provide access, empowerment and an equal position for women. In this context, family law has not been able to fully eliminate gender bias. A clear example is seen in the issue of child custody and the division of joint property after divorce, where women are often at a disadvantage compared to men. In addition, a more gender-sensitive approach to law is needed to ensure women get their rights, both inside and outside the family sphere.

Critical analysis shows that injustices against women in the family are not only influenced by legal violations, but also by patriarchal social and cultural structures. These cultural norms often pose a major challenge to achieving gender equality. Therefore, holistic efforts are needed that include early gender education, strengthening the role of women in the family, and strict supervision of the implementation of existing laws.

Given the situation, the family as the smallest unit in society should be the starting point for change. Reforms in parenting, equal education, and fair division of roles between men and women in the family environment can be the foundation for reducing gender injustice. At the same time, the government needs to strengthen policies that support women, including strict law enforcement against domestic violence cases and providing support services for

victims. Without these measures, efforts to achieve gender equality in Indonesia will remain a discourse without significant realisation.

The presence of the Compilation of Islamic Law (KHI) represents an effort to reform Islamic law in Indonesia. The development of the KHI can be seen as part of the endeavor to create a distinctively Indonesian or contextualized fiqh. The KHI is the result of the *ijtihad* (juridical reasoning) of Indonesian scholars who worked together to formulate legal principles that align with modernity and Indonesian context.

From a material standpoint, the KHI elaborates on Law No. 1 of 1974, applying it specifically to Indonesian Muslims. The Marriage Law applicable to all Indonesian citizens encompasses general legal provisions. Thus, the KHI addresses specific legal needs for Muslims on issues not covered by the Marriage Law, including other family law matters such as inheritance.

Compared to the Marriage Law, the provisions on the rights and duties of spouses in the KHI are more systematic and detailed. The KHI provides more detailed regulations, whereas the Marriage Law offers more general guidelines. This distinction is understandable as the KHI was formulated 16 years after the Marriage Law.

According to T.O. Ihromi, the emphasis on the wife as a homemaker implies a domestic role, while the husband is seen as the breadwinner, thus operating in the public sphere. This creates a social construct of specific roles for husbands and wives. In reality, many wives also work outside the home (career women), yet they bear dual responsibilities due to their domestic role. Thus, after working outside, they must also complete household chores, often resulting in a greater time commitment compared to their husbands, who may rest after returning home. This clearly shows an imbalance (Ihromi, 2003).

However, Mohammad Daud Ali argues that the provision should not be viewed as a downgrade of the wife's position but rather as a division of labor and responsibility. This provision should not imply that wives cannot engage in activities outside the home as long as they do not neglect their domestic role. It is believed that the primary responsibility for managing the household naturally falls on the wife (Daud Ali, 1994)

The provision does not mean that all household tasks are exclusively the wife's responsibility or that the husband cannot participate in domestic activities. Husbands can help with household duties as wives assist in earning a livelihood.

Yet, in reality, many husbands refuse to help with household chores, considering them unsuitable for men, although they do not object to their wives working in the fields. The critical issue is how these roles are actualized, ensuring there is no rigid division between domestic roles for wives and public roles for husbands.

Examining the KHI's content, it can be analyzed that the regulations adequately place women on an equal footing with men. A wife holds a position equal to the husband in maintaining the household. Both are partners bound by rights and obligations, required to understand, respect, and cooperate to establish a peaceful, loving, and happy family.

Although some aspects of the Law may still leave women dissatisfied, considering the diverse nature of Indonesian society and the difficulty in reaching consensus on various issues, the KHI's provisions are deemed sufficient compared to the varied fiqh texts governing marriage previously. The KHI offers a framework for ensuring women's equality with men in the family.

Gender equality in the KHI is evident in several provisions, as outlined by M. Yahya Harahap, such as: (a) The realization of the ideals of *sakinah*, *mawaddah*, and *rahmah* as a shared obligation and responsibility, as stated in Article 77 (1). (b) Eliminating categorical discrimination in child care and education with a shared responsibility principle, as stated in Article 77 (3). Removing normative discrimination in the execution of rights and obligations based on equality, such as both spouses having equal rights to file a lawsuit in religious courts for negligence or refusal to fulfill obligations, as stated in Article 77 (5), and both having the right to jointly decide residence and legal actions, as stated in Article 79 (3). However, Siti Musdah Mulia, who led the Gender Mainstreaming Working Group (PUG) at the Ministry of Religious Affairs and the KHI Reform Team, notes that the KHI contains at least 19 critical issues. These include marriage definitions, marriage age limits, dowries, interfaith marriages, polygamy, wife's divorce rights and reconciliation, *iddah* (waiting period), *ihdad* (mourning period), livelihood responsibilities, marriage contracts, *nusyuz* (rebellion), rights and obligations, interfaith inheritance, gender-specific inheritance shares, interfaith *waqf* (charitable endowments), illegitimate children, and matters of *aul* and *radd* (inheritance shares adjustments) (Siti Musdah Mulia, 2005).

These strategic issues are the focus of the Counter Legal Draft (CLD) they proposed. They argue that KHI needs to be updated for several reasons.



Specifically related to gender equality, some KHI provisions contradict existing laws, such as the amended 1945 Constitution, Law No. 7 of 1984 on the Elimination of All Forms of Discrimination Against Women, Law No. 39 of 1999 on Human Rights, which emphasizes protection and strengthening of women's rights, Law No. 22 of 1999 on Regional Government emphasizing decentralization with full societal participation, and specifically Law No. 23 of 2004 on Domestic Violence (Siti Musdah Mulia, 2005).

Domestic violence is unique because it occurs within the household and involves intimate personal relationships, such as between spouses, parents and children, or among children and household workers living in the household. Men (husbands) in Indonesia's kinship structure are positioned as heads of households. This position often results in significant authority within the family, sometimes leading to a misinterpretation of their role and perpetration of domestic violence. Often, family disputes are resolved through anger and violence, both physical and psychological, as an outlet for marital frustrations.

Laws addressing domestic violence in Indonesia, particularly through the Domestic Violence Eradication Law (UU PKDRT), have traditionally emphasized protecting wives as primary victims. However, there is a growing awareness of the issue of men as victims, though legal protections and societal recognition remain limited. Recent reports indicate that cases of domestic violence against men, though less frequently reported, are significant and often underrepresented due to cultural stigmas and societal expectations about gender roles.

Over the past three years, the National Commission on Violence Against Women (Komnas Perempuan) has documented an increasing trend in men reporting domestic violence cases. However, these reports are still a small fraction of overall cases. The challenges include societal perceptions that equate vulnerability with weakness, discouraging men from seeking legal redress or psychological support. This results in a gap in legal frameworks and support systems tailored to male victims. (Komnas Perempuan, 2024)

For example, most available shelters and counseling services are designed for women and children, leaving male victims without equivalent resources. While the UU PKDRT provides broad definitions of violence that could apply to all genders, its application heavily favors traditional notions of women as victims. Efforts to include men in these protective measures are minimal, and

comprehensive data collection on violence against men remains scarce. (Mawahib, 2024)

Addressing this disparity requires legal reforms and public awareness campaigns that challenge stereotypes and advocate for gender-neutral support systems. Additionally, ensuring equal access to protection services and tailoring interventions for all victims, regardless of gender, are critical steps to uphold justice and equity in domestic violence cases.

### **Phenomenon of Domestic Violence (DV) and Legal Protection for Men (Husbands) in Pekanbaru City**

The sociological phenomenon occurring in Pekanbaru City is not only domestic violence against women but also against men. This can be observed from everyday events, where there are unique or unusual occurrences indicating that domestic violence is also experienced by men (husbands). The Pekanbaru City government should not overlook issues affecting men (husbands) and the enforcement of applicable laws. There is a need for prompt legal action to address violence against men (husbands) with justice, equality, and protection for all citizens by providing institutions that can deliver justice in a fair and neutral manner (Aulia Virgistasari, Irawan, 2022). Domestic Violence (DV) committed by a wife can be subject to criminal penalties such as imprisonment or fines. Relevant articles concerning DV in Law No. 23 of 2004 and the Criminal Code (KUHP) include Article 44 Paragraph (1), Article 44 Paragraph (4), and Article 351 KUHP.

The problems occurring in Pekanbaru City are concerning, with one of the issues being domestic violence against men (husbands). Attention to men (husbands) as victims of violence is not new. Events illustrating discrimination against men (husbands) are not only found in newspapers, television, and mass media but are evident in daily life. The common perception that some women feel superior to men (husbands) can lead to conflicts between wives and husbands. We know that a husband's main duties are to provide for his wife, children, and close family members living at home, and to act as a protector, providing safety as the head of the family, as a member of the social group, and as a community member, upholding harmony and fostering good communication within the family.

Men (husbands) have the responsibility of meeting the family's economic needs, while wives manage the household finances, serve their husbands, take care of children, and participate in social activities. Domestic violence against men (husbands) who fulfill their responsibilities but are not treated fairly can result from wives feeling dissatisfied. This dissatisfaction may lead some housewives to neglect their responsibilities, and when their desires are not met by their husbands, they may resort to violence, such as verbal abuse, demeaning their husbands, or comparing them to other husbands (Basri, et al., 2018)

The issue of violence by wives against their husbands shows that domestic violence can be perpetrated by women as well. This can occur when living costs increase and wives earn more, leading them to feel superior and capable of everything, which may trigger conflicts in the household. One reason for a wife committing violence against her husband is when the husband neglects his role as the head of the household. Cases of domestic violence by wives against their husbands are infrequently reported, though such incidents occur relatively often.

From these cases, we can identify societal issues that also happen in Pekanbaru City, similar to other cities in Indonesia. Factors contributing to domestic violence against husbands include economic issues, behavior of the husband, psychological factors, and more.

Economic problems are often a significant domestic issue. This is due to the need for frequent fulfillment in a marriage, and if these needs are difficult to meet, family members from both sides may intervene to meet these needs before marriage. Religious differences can also be a challenging issue, especially when determining the religion of children. Although such issues can be overlooked at the beginning of marriage, they often lead to conflicts over time, potentially resulting in domestic problems or even divorce.

Differences in culture and habits between partners can indeed lead to conflicts. This occurs due to the difficulty of reconciling habits each partner has brought into the marriage, especially if the couple comes from different countries or regions.

Employment can also trigger conflicts. When a husband does not have a stable job, it often leads to prolonged arguments. This is especially true if the wife has a stable job while the husband does not. The lack of mutual understanding and encouragement can result in ongoing disputes. Significant differences in

character between the husband and wife can lead to minor disagreements that may escalate, such as differing opinions on parenting.

Forms of Domestic Violence (DV) experienced by men (husbands) in Pekanbaru are as follows: *First*, physical violence against men (husbands). One type of violence observed in Pekanbaru is physical abuse, which includes insults, eviction from the home, hitting, and treating the husband like a housekeeper. This reflects emotional imbalances when a wife feels superior in the household. *Second*, psychological violence against men (husbands). Emotional abuse involves actions that demean or belittle the husband, affecting his self-esteem and making him feel unvalued, and leading him to believe that the wife's love for him diminishes. The research in Pekanbaru highlights various forms of psychological violence, including insulting the husband, neglecting him, neglecting household responsibilities, not preparing food, and failing to provide appropriate clothing.

In the author's view, the struggle to uphold men's (husbands') rights should be supported by government initiatives and the Pekanbaru City Council through regulations that protect men's rights and legal standing as victims of domestic violence. This regulation is grounded in the principles fought for by Indonesian national heroes, advocating for equal rights and justice under the law.

From a positive legal perspective, domestic violence falls under special crimes. It is termed a "special crime" because it is not covered in the Penal Code (KUHP), which is the general basis for criminal offenses, but is regulated separately. The legal basis for addressing domestic violence is specified in the Indonesian Law Number 23 of 2004 on the Elimination of Domestic Violence (referred to as Law No. 23/2004). This law serves as the primary legal foundation for prohibiting and penalizing perpetrators of domestic violence. However, the enactment of Law No. 23 of 2004 also reflects the mandate of the 1945 Constitution, which guarantees every citizen the right to safety from violence. The preamble of Law No. 23 of 2004 explicitly states that every citizen is entitled to safety and freedom from all forms of violence, in accordance with the Pancasila philosophy and the 1945 Constitution of the Republic of Indonesia. Any form of violence, especially domestic violence, constitutes a violation of human rights and an affront to human dignity, and such discrimination must be eradicated. The introduction of Law No. 23 of 2004 was prompted by the need to

protect domestic violence victims, most of whom are women, ensuring they receive protection from the state and/or society against violence, threats, torture, or treatment that degrades their dignity and humanity. Despite this, domestic violence cases remain prevalent, and the legal system in Indonesia has not yet fully guaranteed protection for domestic violence victims. Therefore, the establishment of Law No. 23 of 2004 was necessary to address this issue.

This aligns with Amran Suadi's view that the enactment of Law No. 23 of 2004 on the Elimination of Domestic Violence arose from Indonesia's concern over the prevalence of domestic violence, which lacked specific regulation in the Penal Code (KUHP), making it difficult to address legally. On one hand, the absence of specific domestic violence regulations fails to provide legal guarantees, as there are indeed victims of domestic violence in society. This situation was the initial reason for the establishment of Law No. 23 of 2004 on the Elimination of Domestic Violence. Article 1, point 2 states that the Elimination of Domestic Violence is a guarantee provided by the state to prevent domestic violence, to act against perpetrators, and to protect victims of domestic violence. This clearly indicates that positive law also prohibits domestic violence and mandates its eradication, with perpetrators facing specific penalties based on the severity of their actions against the victims. The principles underpinning Law No. 23 of 2004 on the Elimination of Domestic Violence include respect for human rights, justice, gender equality, non-discrimination, and protection of victims. Interestingly, this law not only addresses sanctions for perpetrators but also outlines various rights for victims of violence.

Legal protection refers to the safeguarding of dignity and honor, as well as the recognition of human rights held by legal subjects based on legal provisions against arbitrary actions, or as a set of rules that can protect certain aspects from others. In relation to consumers, it means that the law provides protection for customer rights against anything that may result in the failure to meet those rights (Philipus M. Hadjon, 1987). Conceptually, the legal protection provided to Indonesian citizens is an implementation of the principles of recognition and legal protection of human dignity and honor based on Pancasila and the rule of law grounded in Pancasila (Philipus M. Hadjon, 1987)

According to Van Boven, the rights of victims include the right to know, the right to justice, and the right to reparation (restoration), which refers to all types of both material and non-material recovery for victims of human rights

violations. These rights are outlined in various human rights instruments and in the jurisprudence of international human rights committees and regional human rights courts. For the sake of justice and legal certainty, the formulation of rights and obligations in regulations or laws must be accountable from a legal scientific perspective.

Investigation, prosecution, and court proceedings are carried out according to the applicable criminal procedural laws, unless otherwise specified by the Domestic Violence Elimination Law (PKDRT). During this process, the victim only interacts with the investigator (police) during the examination process (Berita Acara Pemeriksaan, BAP), and with the prosecutor and judge during court hearings. Initially, the first to be examined in the court process is the victim-witness of domestic violence, and the victim is not required to be present at subsequent hearings. It is advisable for the victim's family or support person to attend each hearing to monitor the proceedings, ensuring that the judge considers the victim's rights when making a decision. To prepare the victim for court proceedings, the victim or their family can seek assistance from psychologists or legal aid organizations/NGOs specializing in cases of violence against women and children. The judge must base their ruling on the evidence presented during the trial. According to Article 55 of the Domestic Violence Elimination Law (PKDRT):

*"As one of the valid pieces of evidence, the testimony of a victim-witness alone is sufficient to prove the defendant's guilt, provided it is supported by another valid piece of evidence."*

Furthermore, the explanation of this article states that other valid evidence in cases of sexual violence committed outside of the marriage is the defendant's confession. This means that with the testimony of the domestic violence victim and the defendant's confession, the case can be brought to court. Besides the defendant's testimony, other valid evidence includes witness statements, expert testimony, documents, and indications. However, in practice, domestic violence is often seen as a private matter between husband and wife, leading to fear among the public to intervene in resolving such issues. As a result of the community's or environment's neglect, women can suffer injuries, disabilities, or even death due to violence perpetrated by their husbands (Ibn Qudamah, 1969). With the enactment of the Domestic Violence Elimination Law (UU PKDRT), the public should not be afraid or hesitant to assist victims of

domestic violence, as Article 1 of the PKDRT Law obligates individuals who witness or become aware of domestic violence to take action within their capacity.

Generally, crimes under the Domestic Violence Elimination Law (PKDRT) are public offenses, except for those specified in Article 44, paragraph (4), and Article 45, paragraph (2), which address physical or psychological violence committed by a spouse against the other, not resulting in illness or hindrance to work or daily activities, which are considered reportable offenses. Reportable offenses require the domestic violence victim to file a report for the crime committed by the physical or psychological abuser. Without a report, the police cannot process the crime. Due to the nature of reportable offenses, the victim can withdraw the report at any time, which can result in domestic violence cases remaining unresolved or perpetrators not being punished appropriately (Amir Syarifuddin, 2009).

### **Legal Protection and Discrimination Actions**

When a wife is said to be nusyūz toward her husband, it means she considers herself to be in a higher position than her husband, leading her to feel that she is no longer obligated to obey him. Definatively, nusyūz is understood as a wife's disobedience to her husband in fulfilling what Allah SWT has mandated upon her. Some actions by a wife that are considered nusyūz include: (a) The wife refuses to move with her husband to live in the house he has provided according to his means, or the wife leaves the house without her husband's permission; (b) If they are living in the wife's house with her permission, and then at some point the wife forbids him from entering the house without any intention to move to a house provided by the husband; (c) The wife refuses her husband's invitation to live in the house he has prepared without a valid reason; (d) The wife travels without her husband or a mahram, even if the trip is obligatory, such as for Hajj, as traveling without her husband or mahram is considered sinful (Ibn Rushd, n.d., p. 50)

If the husband observes that his wife may commit such actions, he should advise her gently. If the wife continues to disobey, the husband should separate from her bed. If she persists in her disobedience and continues her rebellion, the husband may strike her, provided it does not cause bodily harm. In striking, the

face and other dangerous areas should be avoided, as the aim is not to inflict pain but to provide a lesson.

Nusyūz is considered haram as it contradicts what has been established by religion through the Qur'an and Hadith. In relation to Allah, the perpetrator is subject to divine punishment, and in relation to her husband and family life, it constitutes a violation of marital relations. For such actions, the perpetrator faces consequences, including losing her rights as a wife during the period of nusyūz. Nevertheless, nusyūz does not automatically dissolve the marriage bond.

There are three chronological stages to address a nusyūz wife as outlined in the verses mentioned above. *First*, if signs of nusyūz are apparent, the husband should provide warning and instruction to his wife, explaining that her actions are wrong according to religion and may result in the loss of her rights. If this instruction causes the wife to revert to her previous state as a good wife, the issue is resolved and should not proceed further (Abdurrahman Ghazaly, 2003) *Second*, if the wife does not show improvement and nusyūz is objectively confirmed, the husband should then separate from the bed, meaning to cease sexual relations. According to scholars, hijrah in this context also means ceasing communication with the wife. This separation should not exceed three days. During this phase, only bed separation is permitted, and physical punishment is not allowed, according to the apparent meaning of the verses. However, according to one narration from Imam Ahmad, light physical punishment is permissible if this stage clearly shows disobedience. If the separation leads to the wife returning to obedience, the issue is resolved, and no further steps are needed (Amir Syarifuddin, p. 98) *Third*, if bed separation does not lead to improvement and the wife remains in a state of nusyūz, the husband may strike her with a non-harmful blow. This strike should be educational or disciplinary, not based on hatred. If this mild punishment leads to the wife returning to her previous state, the issue is resolved. However, if the problem persists even after this third stage, the husband may pursue other measures, including divorce (Amir Syarifuddin, p. 98)

### **Legal Protection from Economic and Sexual Exploitation**

Divorce can occur through the use of a ransom, by pronouncing talaq, or through khulu'. Khulu' is a form of divorce where a ransom, compensation, or 'iwaḍ is involved. Scholars use several terms to refer to the same concept as



khulu', such as fidyah, ṣulḥ, and mubārah. Although these terms share a similar meaning, they differ in terms of the amount of compensation or 'iwaḍ involved. If the compensation equals the full amount of the dowry, it is called ṣulḥ; if it exceeds the dowry, it is called fidyah; and if the wife is released without compensation, it is referred to as mubārah.

If a wife perceives that her husband is not adhering to what Allah SWT requires in their marriage and the husband does not wish to divorce her, she may request a divorce from her husband with compensation provided to him. If the husband agrees and divorces her based on this compensation, the marriage is dissolved. Khulu' is a form of divorce and is sometimes discussed within the scope of talaq literature, meaning that the rules applicable to talaq generally also apply to khulu'.

Li'an involves several key terms that explain its essence: First, the term "oath" indicates that li'an is a form of oath or testimony to Allah, involving five statements. The first four are testimonies affirming the truthfulness of the claim, and the fifth is a curse from Allah upon the person if they are lying. Second, the term "husband" in relation to "wife" signifies that li'an occurs between a husband and wife and does not apply outside their relationship. Those not bound by marriage are not involved in li'an. Third, the term "accusing of adultery" means that the husband's oath is that his wife has committed adultery, either because he witnessed it himself or believes that the child she is carrying is not his. If the accusation does not relate to adultery or the child, it is not considered li'an. Fourth, the term "husband unable to produce four witnesses" means that if the husband can provide the four witnesses required for accusing adultery, it is not considered li'an but rather a matter for judicial resolution. In cases where a person accuses a woman of adultery and cannot provide four witnesses, they face a penalty of 80 lashes (*ḥadd qazf*) (Ibn Qudamah, 1969).

If the accusation is made by a husband against his wife and he cannot provide the required witnesses, the accusation is rejected and he faces the prescribed penalty. To avoid the penalty of *ḥadd qazf*, the husband is allowed to pursue li'an, making his claim through four testimonies affirming the truth of his accusation. In the fifth testimony, he invokes Allah's curse upon himself if he is lying (Ibn Qudamah, 1969). The Marriage Law and Government Regulations do not specifically address li'an as a cause for divorce. However, the Religious Courts Law mentions it in the context of divorce due to accusations of adultery.

Mahar, etymologically, means dowry. Terminologically, mahar is a mandatory gift from the groom to the bride as an expression of his sincerity and to foster love between them. It can be in the form of goods or services (such as manumission, teaching, etc.) (Abdurrahman Ghazaly, 2003).

Islam places great importance on and respects a woman's status by granting her rights, including the right to receive mahar. Mahar is given exclusively by the groom to the bride and cannot be given to anyone else, even those very close to her. No one else may touch or use it, not even the husband, except with the bride's consent and willingness. According to the Compilation of Islamic Law (KHI), mahar is a gift from the groom to the bride, which can be in the form of items, money, or services that do not contravene Islamic Law.

The Marriage Law does not regulate mahar in detail, but KHI extensively covers it in articles 30 through 38, largely adopting the views of the majority of scholars. In practice, the obligation to pay mahar falls on the groom, which becomes effective only after the marriage contract is concluded. Similarly, the right to receive the mahar belongs to the bride, who is entitled to it only after the marriage contract.

### **Legal Protection from Physical, Psychological Violence, and Neglect**

Syiqāq (discord) refers to disputes or conflicts, particularly between a husband and wife, indicating that the marital discord cannot be resolved by the couple alone. Syiqāq arises when either or both spouses fail to fulfill their obligations.

Chronologically, Ibn Qudamah describes the steps to address such conflicts as follows: First, the judge examines and investigates the cause of the conflict. If it is determined that the cause is the wife's nusyūz (rebellion), the resolution process is similar to that for the husband's nusyūz. The judge seeks someone respected by the husband to advise him against using violence against his wife. If the conflict arises from both parties accusing each other of being the troublemaker and neither is willing to compromise, the judge appoints a respected individual from each side to resolve the conflict. These individuals are empowered to reconcile the nearly broken family or, if reconciliation is not possible, to proceed with divorce, depending on the best and most feasible option according to their judgment.

Scholars differ on the role of the appointed ḥakam (arbitrators). According to one narration from Imam Ahmad, which is also followed by Atha' and one opinion of Imam al-Shafi'i, as well as a narration from al-Hasan and Abu Hanifah, the role of the two ḥakams is to act as representatives of the husband and wife. In this capacity, the ḥakams are only authorized to reconcile the couple and cannot divorce them without the consent and agreement of both parties. The rationale for this view is that the honor of the wife is the husband's right, while the husband's property is the wife's right. Since both parties are mature and competent, no one can act on their behalf without their consent.

The second view, held by Ali, Ibn Abbas, al-Sha'bi, al-Nakha'iy, Imam Malik, al-Awza'iy, Ishak, and Ibn Munzir, is that the two ḥakams function as judges. In this role, they can act according to what they deem best, without needing the consent of both parties, whether it involves reconciliation, divorce with compensation, or divorce without compensation. The rationale for this view is based on the guidance provided in the aforementioned verse.

Whether according to the opinion that the ḥakam acts as a representative or as a judge, both must meet the requirements set by Islamic law, namely that they are mature, mentally sound, male, and just. These are general conditions for acting in the public interest.

Then, ḥaḍānah (child custody) linguistically means placing something near the ribs or on the lap, as a mother places her child on her lap while nursing, implying protection and care. Therefore, ḥaḍānah is used to describe the education and care of a child from birth until they are capable of managing themselves, carried out by the child's relatives (Abdurrahman Ghazaly, 2003).

Islamic jurisprudence defines ḥaḍānah as the care of young children, both male and female, or older children who have not yet reached maturity. This care involves providing what is beneficial, protecting them from harm, and educating their physical, spiritual, and intellectual development so they can stand on their own, face life, and take on responsibilities.

Ḥaḍānah differs from education (tarbiyah), *ḥaḍānah* includes the concept of both physical and spiritual care, alongside education. Education may be provided by the child's family or external professionals, while ḥaḍānah is carried out by the child's family members, except when the child has no family, in which case it is performed by any woman and other relatives. ḥaḍānah is a right of the

custodian, while education may not necessarily be a right of the educator (Margiyanti, 2000).

The law specifically addresses child custody as a consequence of divorce, particularly under the name of *ḥaḍānah*. However, the law generally regulates the rights and obligations of parents toward their children.

### **Special Protection in Professional Practice Against Threats to Safety or Health Related to Female Reproductive Functions**

The obligation to work prescribed for men is also mandated for women. Jobs that are prohibited for men are similarly prohibited for women. However, Allah has also established moral and social guidelines for men in their work, requiring them to adhere to these guidelines. The same is required of women; thus, in every job, women must comply with these moral and social standards. Therefore, any job performed by both men and women must not contradict these guidelines (Margiyanti, 2000).

For example, Allah SWT has decreed that women must protect their honor. Allah has prohibited them from being alone (*khalwah*) with men who are not *maḥram*, just as men are similarly prohibited. This prohibition means that women should not engage in activities that may lead them into *khalwah* or actions that may compromise their honor. Similarly, men are also forbidden from engaging in activities that might lead them into *khalwah* or actions that could create temptation due to their violation of these moral and social guidelines. Additionally, to prevent women from facing difficulties in prioritizing, Islamic law stipulates that the responsibility for fulfilling the economic needs of a wife and children falls on men (Margiyanti, 2000).

The statement regarding the obligation to work that applies equally to men and women shows the principle of equality in Islam, while still considering the moral and social stipulations set by Allah SWT. This equality must be critically understood as an attempt to remove gender bias that can marginalise the role of women in the world of work. Islam emphasises that the protection of honour, the prohibition of *khalwah*, and the adjustment of roles between men and women are aimed at creating a safe and dignified work environment for both. In this context, it is also important to highlight that the division of economic responsibilities by men is not intended to limit women's contributions, but rather ensure a balance of roles within the family. As such, this principle supports the

elimination of discrimination and domestic violence, creating harmony based on justice.(Alfaizi, 2022)

### **Access to Legal Information and Services According to Needs**

In reality, in Indonesia, the condition of an imbalanced culture has led to a legal system (substantive law, legal apparatus, legal culture) that is less responsive in protecting women's interests. The government's efforts to provide protection for women encompass many aspects, and their realization requires cooperation within networks. Thus, these efforts should not only be carried out by the Ministry of Women's Empowerment but also by other institutions, such as social organizations within the community. Social institutions aimed at fulfilling basic human needs essentially have several functions, namely: 1) Providing guidance to community members on how they should behave or act when facing societal issues, especially those related to needs; 2) Preserving social cohesion; 3) Providing a framework for the community to establish a social control system. This means overseeing the behavior of its members. Therefore, it is tragic (misguided) if normative texts in Islam are understood literally or in isolation, making the verses of the Qur'an appear harsh, inhumane, and not considering the conditions of the wife in the context of maintaining a relationship that is meant to be a form of worship. Such an interpretation would contradict the Qur'anic principle of *mu'asyarah bi al-ma'ruf* (living with kindness). The integrity and harmony of a happy, secure, peaceful, and harmonious household are the desires of every household. The Republic of Indonesia is a nation based on the belief in One God and is founded on the protection of women's rights within the family according to Islamic law. Therefore, everyone in a household must base their rights and obligations on religion and law. This needs to be continuously developed to build a harmonious household towards a *sakinah, mawaddah, wa rahmah* family to prevent, protect victims, and take action against perpetrators of domestic violence. The state and society must implement prevention, protection, and prosecution of perpetrators in accordance with noble Islamic teachings, the philosophy of Pancasila, and the 1945 Constitution. Moreover, the state views all forms of violence, especially domestic violence, as a violation of human rights, a crime against human dignity, and a form of discrimination. Additionally, to protect female victims of domestic violence, there is a need to establish a specialized Domestic Violence Court. This is an effort to address the complexities of issues related to domestic violence. With

such a court, victims of domestic violence, especially women, will receive legal protection that ensures justice and gender fairness (Dahlia, et al., 2024)

There are several forms of rights that are inherent according to human dignity based on legal regulations, including: **(a)** Equality of Rights Between Men and Women **(b)** Women's Right to Education **(c)** Women's Right to Dowry and Financial Support **(d)** Women's Right to Request a Divorce **(e)** Women's Right in Inheritance **(f)** Women's Right to Own Property.

Domestic Violence (DV) includes various forms of treatment that physically, psychologically, sexually, or economically harms family members, with the aim of dominating or controlling the victim. This phenomenon is often caused by power imbalances in family relations, patriarchal cultural norms, and a lack of legal awareness in society. The importance of education and law enforcement are strategic steps in preventing and handling domestic violence. However, handling domestic violence cases is not enough to focus only on the victim, but must also include restoring family relationships and changing the mindset of the perpetrator so as not to repeat his actions. A holistic approach based on law, psychology and education needs to be applied to create a harmonious family free from violence.(Kanda, 2024)

### **Conclusion**

The existence of Pekanbaru City Regional Regulation No. 2 of 2023 on the Protection of Women and Children addresses various issues related to domestic violence experienced by women, particularly within marriage. In response to these issues, the Government, as the Executive, along with the Pekanbaru City Council as the Legislature, took the initiative to jointly issue this regulation. This regulation, focused on women's rights, was developed through comprehensive considerations involving the Government, the Pekanbaru City Council, community leaders, and academics. The legislation of Pekanbaru City Regional Regulation No. 2 of 2023 on the Protection of Women and Children is based on several philosophical, sociological, and juridical foundations. These foundations are the primary basis for the Government and the Pekanbaru City Council to create a specific regulation concerning women's protection against Domestic Violence (DV) perpetrated by men (husbands). It is noteworthy that the presence of this regulation aims to benefit everyone, without regard to the legal subject's status. The author intends to contribute the perspective that this regulation is

intended to bind all individuals collectively, not partially, ensuring equal rights and obligations before the law in Indonesia.

From the perspective of Islamic Family Law, the existence of Pekanbaru City Regional Regulation No. 2 of 2023 on the Protection of Women and Children, when viewed in the context of Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI), suggests that the rights and status of the wife are equal to those of the husband within family life and social interactions (Article 31, Paragraph 1). This provision establishes that the status of husband and wife is equal, both in terms of their humanity and their roles within the family. The fundamental aim of Article 31, Paragraph 1 is to ensure that there is no dominance between the spouses, whether in managing the household or in raising future generations. Additionally, this provision allows wives to hold important positions in society that were previously monopolized by men and to develop their skills and talents similarly to their husbands. However, it is crucial for wives to remember not to neglect their primary duties as homemakers, as neglecting these responsibilities could lead to the disintegration of the household.

Both parties have the right to perform legal actions (Article 31, Paragraph 2). This provision aligns with customary law and Islamic law, which allows a married woman to undertake legal actions in society independently, as she could before marriage. Thus, according to this provision, a wife can freely engage in legal activities related to economic and business matters without needing her husband's permission or assistance.

## REFERENCES

- Abdullah, A. G., (1998), *Hukum Islam dalam Sistem Masyarakat Indonesia*, Jakarta: Logos Wacana Ilmu
- Abdurrahman G., (2003), *Fiqh Munakahat*, Jakarta: Prenada Media
- Abdurrahman, H., (2023), *Perlindungan Hukum Terhadap Korban Kekerasan Dalam Rumah Tangga dalam Putusan Pengadilan Negeri sebagai Implementasi Hak-hak Korban*, available at <http://law.uui.ac.id/images/stories/jurnal%20Hukum/7%20Hamida%20Abdurrahman.pdf>.
- Al-Ati, H., A., (1984), *The Family Structure in Islam, Keluarga Muslim*, Surabaya: Bina Ilmu

- Alfaizi, M. Q. (2022). Membangun Kesetaraan Gender Dalam Kehidupan Keluarga Perspektif Hukum Islam. *Jurnal Restorasi Hukum*, 5(1), 87. <https://doi.org/10.14421/jrh.v5i1.2383>
- Ali, M. D, (1994), *Peraturan Perkawinan di Indonesia dan kedudukan Wanita di dalamnya dalam Mimbar Hukum Aktualisasi Hukum Islam*, No. 15, Vol. V
- Ali, M. D. (1993), *Hukum Islam (Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia)*, 3rd ed., Jakarta: Rajawali Pers
- Amir S., (2009). *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*, Jakarta: Kencana
- Article 1 (3) of Law No. 23 of 2002 on Child Protection.
- Aulia Virgistasari, AD Irawan, (2022). *Pelecehan Seksual Terhadap Korban Ditinjau Dari Permendikbud Nomor 30 Tahun 2021*, *Media of Law and Sharia*, Vol. 3, No. 2
- Basri, et al., (2018). *Kekerasan Dalam Rumah Tangga (KDRT) Yang Dialami Suami*, *Jurnal: Neo Societal*, Vol. 3, No. 2. ISSN: 2503-359X.
- Dahlia, et al., (2024). *Perlindungan Hak Perempuan dalam Keluarga menurut Hukum Islam: Analisis Kasus Diskriminasi Gender*, *Jurnal Ilmu Hukum dan Tata Negara*, Vol. 2, No. 1, March. DOI: <https://doi.org/10.55606/birokrasiV2i1.897>.
- Huda, N. (2011) *Problematika Pembatalan Peraturan Daerah*, Yogyakarta: FH UII Press
- Ibnu Q., (1969). *Al-Mughniy*, Cairo: Mathba'ah al-Qahirah
- Ibnu R., (t.th). *Bidāyah al-Mujtahid*, Semarang: Maktabah Usaha Keluarga
- Ibrahim, M. K. and Harmaily I, (1985), *Pengantar Hukum Tata Negara Indonesia*, Jakarta: Sinar Bakti
- Jazuni, (2005), *Legislasi Hukum Islam di Indonesia*, Bandung: Citra Aditya Bakti
- Kanda, A. S. (2024). ANALISIS DAMPAK DAN FAKTOR TERJADINYA KEKERASAN DALAM RUMAH TANGGA DI DESA CILILIN. *Jurnal Ilmiah Research Student*, 1(3).
- Komnas Perempuan. (2024). *Menemukanali Kekerasan Dalam Rumah Tangga (KDRT)*. Komnas Perempuan | Komisi Nasional Anti Kekerasan Terhadap



- Perempuan. <https://komnasperempuan.go.id/instrumen-modul-referensi-pemantauan-detail/menemukanali-kekerasan-dalam-rumah-tangga-kdrt>
- Lubis, S., et al. (2005), *Hukum Acara Perdata Peradilan Agama di Indonesia*, Jakarta: Kencana
- Mahkamah Agung RI, (2011), *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya*, Jakarta: Biro Hukum dan Humas Mahkamah Agung RI
- Manan, A., (2006), *Reformasi Hukum Islam di Indonesia*, Jakarta: Raja Grafindo Persada
- Manurung, D. A. (2021). *Kinerja Dinas Pemberdayaan Perempuan dan Perlindungan Anak Kota Pekanbaru*, *Jurnal Naira*, Vol. 14, No. 2, September
- Margiyanti, (2000), *Hak-hak Perempuan dalam Islam*, Yogyakarta: LSPA
- Mawahib, M. Z. (2024, January 3). Revolusi 2024: Menekan Angka Kasus KDRT. *Keadilan dan Kesetaraan Gender - Mubadalah*. <https://mubadalah.id/revolusi-2024-menekan-angka-kasus-kdrt/>
- Moloeng, L. J. (2007), *Metodologi Penelitian Kualitatif*, Bandung: PT Remaja Rosda Karya
- Mulia, S. M., (2005), *Muslimah Reformis: Perempuan Pembaru Keagamaan*, 1st ed., Bandung: Mizan
- N. Noorrrhasanah, (2020). *Hak Pendapatan Pekerja Perempuan Dalam al-Qur'an*, available at [http://journal.uinsgd.ac.id/index.php/kt\\_jurnal](http://journal.uinsgd.ac.id/index.php/kt_jurnal) *Khazanah Theologia*, Vol. 2, No. 2
- Nasution, K. (2007), *Pengantar dan Pemikiran Hukum Keluarga Perdata Islam Indonesia*, Yogyakarta: Acamedia & Tazzafa
- Philipus M. Hadjon, (1987). *Perlindungan Hukum Bagi Rakyat Indonesia*, Surabaya: PT. Bina Ilmu
- Rawasta, R. et al. (2009), *Menilai Tanggungjawab Sosial Peraturan Daerah*, Jakarta: Pusat Studi Hukum dan Kebijakan Indonesia (PSHK)
- Rohaeni, H. (2024). Sistem Literature Review: Analisis Penyebab Cerai Gugat Pada Keluarga Muslim di Indonesia Akibat KDRT. *KRTHA BHAYANGKARA*, 18(2), 406–416.

- Sahertian, O. L. (2023). *Perempuan Korban Kekerasan Dalam Rumah Tangga*. Cv. Creator Cerdas Indonesia.
- Sirajuddin M, (2008), *Legislasi Hukum Islam di Indonesia*, 1st ed.,Bengkulu: Pustaka Pelajar
- Syarif, A. (1987), *Perundang-Undangan, Dasar, Jenis dan Membuatnya*, Jakarta: Bina Aksara
- T.O. Ihromi, (2003). *Catatan-catatan Tentang Gender dan Transformasi Sosial ke Arah Perwujudan Keadilan dan Keadilan Gender*, Paper presented at the Social Transformation Seminar for Gender Justice organized by Pokja Pedoman, July 31 at Hotel Wisata Jakarta Pusat
- Umar, N. (1999), *Argumen Keadilan Gender Perspektif al-Qur'an*, Jakarta: Paramadina
- Zahrah, M. A., (t.th), *Ushul Fiqh*, Darul al-Fikr al-'Arabi