

Domestic Violence as a Cancellation of Inheritance Rights: An Analysis of Article 173 of the Compilation of Islamic Law Perspective of the Shafi'i School

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Abstract

Domestic violence (DV) is one of the most prevalent forms of human rights violations in Indonesia. In Chapter 173 of the Compilation of Islamic Law (KHI), it is stipulated that a person is barred from becoming an heir if they are proven, based on a final and binding court decision, to have committed murder, attempted murder, severe abuse, or slander against the deceased. Although the term "domestic violence" is not explicitly mentioned, several forms of domestic violence may meet the elements specified in the article. This study examines the status of domestic violence as a nullifier of inheritance rights from the perspective of Article 173 of the Compilation of Islamic Law (KHI) and the Shafi'i school of thought. The objective of this study is to analyze and identify the concept of domestic violence as a nullifier of inheritance rights based on Article 173 of the KHI and the Shafi'i school of thought's perspective on domestic violence as a nullifier of inheritance rights. This study employs a qualitative approach with a literature review methodology. Research results indicate that acts of domestic violence (KDRT) that constitute murder, attempted murder, serious assault, or defamation against heirs, with a final and binding court decision, can prevent the perpetrator from obtaining inheritance rights, provided that the criminal acts meet the specified qualifications and the criminal penalties are in accordance with the provisions. However, this determination remains subject to the judge's decision and must not be made arbitrarily. In the Shafi'i school of thought, the obstacles to inheritance rights that are explicitly recognized are murder in any form, differences in religion, slavery, differences in status of unbelief, apostasy, and *ad-daur al-hukmi*, so that domestic violence only becomes an obstacle to inheritance if the act reaches the level of murder of the heir.

Keywords: Domestic violence. Inheritance Obstructors. Shafi'i madhhab.

Abstrak

Kekerasan dalam rumah tangga (KDRT) merupakan salah satu bentuk kasus pelanggaran hak asasi manusia di Indonesia dengan angka yang cukup tinggi. Dalam Pasal 173 Kompilasi Hukum Islam (KHI) mengatur bahwa seseorang terhalang menjadi ahli waris apabila terbukti, berdasarkan putusan pengadilan berkekuatan hukum tetap, melakukan pembunuhan, percobaan pembunuhan, penganiayaan berat, atau fitnah terhadap pewaris. Meskipun istilah "KDRT" tidak disebutkan secara eksplisit, sejumlah bentuk KDRT dapat memenuhi unsur-unsur yang dimaksud dalam pasal tersebut. Penelitian ini mengkaji tentang kedudukan kekerasan dalam rumah tangga (KDRT) sebagai pembatal hak waris dalam perspektif Pasal 173 Kompilasi Hukum Islam (KHI) dan pandangan mazhab Syafi'i. Tujuan dari penelitian ini untuk menganalisis dan menemukan konsep KDRT sebagai pembatal hak waris berdasarkan Pasal 173 KHI dan perspektif mazhab Syafi'i tentang KDRT sebagai pembatal hak waris. Penelitian ini menggunakan pendekatan kualitatif dengan jenis studi pustaka. Hasil penelitian menunjukkan bahwa tindak kekerasan dalam rumah tangga (KDRT) yang memenuhi unsur pembunuhan, percobaan pembunuhan, penganiayaan berat, maupun fitnah terhadap pewaris, dengan adanya putusan pengadilan berkekuatan hukum tetap, dapat menjadi penghalang bagi pelaku untuk memperoleh hak waris, selama memenuhi kualifikasi tindak pidana yang disebutkan dan ancaman pidananya sesuai ketentuan. Namun, penetapan ini tetap bergantung pada putusan hakim dan tidak boleh memutuskan dengan semena-mena. Adapun dalam perspektif mazhab Syafi'i, penghalang hak waris yang diakui secara tegas adalah pembunuhan dalam bentuk apapun, perbedaan agama, perbudakan, perbedaan status kekafiran, murtad, dan *ad-daur al-hukmi*, sehingga KDRT hanya menjadi penghalang waris jika perbuatan tersebut sampai pada tingkat pembunuhan terhadap pewaris.

Kata kunci: KDRT. Penghalang Waris. Mazhab Syafi'i.

Introduction

Domestic violence (KDRT), or domestic violence, is one of the social problems that still often occur in Indonesian society. Etymologically, violence is a translation of *violence* which means power or power. The word *violence* comes from the Latin word *violentia* which means *force* (violence). In terminology, *violence* is defined as the behavior of the parties involved in the conflict to win the conflict.¹

The term violence is used to describe a behavior, either overt or *covert* and can be *in the form of offensive* or defensive actions accompanied by the use of force against others. Some legal experts define violence as an act that results in physical or psychological damage. According to the Great Dictionary of the Indonesian Language (KBBI), violence comes from the word "keras" which gets the prefix 'ke' and the suffix 'an' which means the act of a person or group of people that causes injury or death to another person or causes physical damage or other people's goods.² Thus, domestic violence can be understood as an act that causes injury, physical damage, or even death to family members within the scope of the household.

According to Komnas Women, domestic violence is gender-based violence that occurs in the personal realm. This violence often occurs in personal relationships, where the perpetrator is a person who is well known and close to the victim, for example, acts of violence committed by husbands against wives, fathers against children, uncles against nephews, grandfathers against grandchildren. Domestic violence also appears in dating relationships, or experienced by domestic assistants (ART) who live in the household. In addition, domestic violence is also interpreted as violence against women by family members who are related by blood.³

According to Law Article 1 Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law), domestic violence is any act against a person, especially a woman, which results in physical, sexual, psychological, and/or domestic distress or neglect, including threats to commit acts, coercion, or unlawful deprivation of independence within the scope of the household. The rate of domestic violence in Indonesia has increased. Data from the Ministry of Women's Empowerment and Child Protection (Kemen PPPA) shows a total of 32,063 cases of violence reported in 2024. Of the total cases, the majority of victims were women with 27,735

¹ Nurul Fatia Kurniasi, "The Elimination of Violence Against Children during the Covid-19 Pandemic in Indonesia Based on The United Nations Convention on the Right Of The Child (UNCRC 1989)" (Thesis, Hasanuddin University, 2022).

² <https://kbbi.kemdikbud.go.id/entri/kekerasan>. Retrieved July 6, 2025.

³ <https://komnasperempuan.go.id/instrumen-modul-referensi-pemantauan-detail/menemuknali> domestic violence. Retrieved May 8, 2025.

cases. Meanwhile, male victims reached 6,901 cases. The number of reports coming in Indonesia in 2024 is observed to increase quite high compared to 2023 with a total of 29,083 cases.⁴

Based on the high number of domestic violence cases, the government has taken various efforts to overcome domestic violence, both through legal policies and strengthening services for victims. Among them, the Government has passed the PKDRT Law Number 23 of 2004 as the main legal basis, which aims to prevent violence, protect victims, take action against perpetrators, and maintain the integrity and harmony of the household.⁵ Nevertheless, domestic violence continues to increase every year. This shows that Indonesia is in an emergency handling of domestic violence cases. Although Indonesia already has the PKDRT Law Number 23 of 2004, in its implementation the regulation has not been fully effective.

The researcher found that there are sanctions that are relevant to domestic violence even though it does not specifically regulate domestic violence sanctions that domestic violence can be a barrier to inheritance rights for the perpetrator. The inheritance barrier comes from two words, namely barrier and inheritance. In KBBI, the word barrier means something that hinders or is an obstacle to the achievement of a goal.⁶ And the definition of inheritance according to KBBI means a person who is entitled to receive inheritance from a deceased person.⁷

As for what is meant by inheritance barrier, M. Hasbi Ash Shiddieqy gave the understanding that the barrier in inheritance is an inheritance that causes people with that trait to not be able to receive inheritance/inheritance, even though there are enough causes and sufficient conditions.⁸ There are three barriers to inheritance agreed upon by scholars: murder, slavery, and religious differences. KHI states that a person can be prevented from becoming an heir if he is blamed for killing or attempting to kill or severely mistreat the heir. KHI does not explicitly mention that domestic violence perpetrators can be prevented from getting an inheritance but mentions that among the obstacles is if someone kills or severely abuses the heirs. Therefore, this study is important to find out whether domestic violence can cancel inheritance rights based on the provisions of this article.

KHI is the first codification of Islamic law in Indonesia which contains a collection of Islamic family law rules which at 21 basis are taken from 38 books of fiqh. Of the 38 fiqh books,

⁴ <https://kekerasan.kempppa.go.id/ringkasan>, Retrieved May 12, 2025.

⁵ <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-pastikan-siklus-kekerasan-berhenti-dalam-penanganan-kasus-kekerasan-dalam-rumah-tangga>. Retrieved 15 May 2025.

⁶ <https://kbbi.kemdikbud.go.id/entri/penghalang>. Retrieved July 7, 2025.

⁷ <https://kbbi.kemdikbud.go.id/entri/waris>. Retrieved July 7, 2025.

⁸ T.M Hasbi Ash Shiddieqy, *Fiqhul Mawaris*, 1 ed. (Bulan Bintang, 1973).

most of them are from the fiqh books of madzhab Shafi'i. While some of the others are fiqh books of Hanafi, Maliki, Hanbali, Dzahiri, and Shi'ah madzhab fiqh.⁹ This shows that although it is dominated by the Shafi'i school, the KHI is not bound by a particular school. The researcher is also interested in further researching the perspective of Shafi'i on domestic violence as a nullifier of inheritance rights as stated in the KHI. This is because the content of KHI is on average built based on the Shafi'i school. The dominance of the fiqh books of the Shafi'i school in the preparation of the Compilation of Islamic Law is inevitable. This condition is related to the process of spreading Islam in the archipelago. Islam was propagated by the Arabs who were of the Shafi'i sect in the first century AD.¹⁰

From the results of the search for various previous studies, so far there has been no research on domestic violence as a cancellation of inheritance rights (an analysis study of article 173 khi from the perspective of the Shafi'i madhhab). The results of previous research are as follows: First, Lailatul Mawaddah who researched "Attempted Murder as *Mawani' Al-Irth* in KHI Article 173 Seen From the Perspective of *Maqasid Al-Syari'Ah*" which was carried out in 2019.¹¹ The approach used is a qualitative approach. The results of the study show that the provisions of article 173 of the KHI regarding attempted murder that are prevented from inheriting are not suitable for application. The side of the equation is the discussion of the inheritance barrier in KHI article 173. Meanwhile, the difference is that this study discusses domestic violence as a cancellation of inheritance rights according to KHI Article 173 from the perspective of the Shafi'i school.

Second, Atik Riswantoro who researched "The Application of Article 185 of the Compilation of Islamic Law (KHI) Related to the Settlement of Inheritance Disputes" which was carried out in 2020.¹² The approach used is a sociological juridical approach. The results of the study show that the concept of surrogate heirs in article 185 of the KHI applies to all descendants of heirs. The side of the equation is the discussion around inheritance problems in KHI. Meanwhile, the difference is that this study discusses domestic violence as a cancellation of inheritance rights according to KHI Article 173 from the perspective of the Shafi'i school.

⁹ Linda Melinda and Nurrohmah, "The Position of the Compilation of Islamic Law in the Politics of Family Law in Indonesia," *El-Ahli : Journal of Islamic Family Law* 5, no. 1 (2024): 18–30, <https://doi.org/10.56874/el-ahli.v5i1.1853>.

¹⁰ Khairul Umam, "The Absorption of Fiqh Madzhab Shafi'i in the Compilation of Islamic Law," *De Jure: Journal of Law and Sharia* 9, no. 2 (2017).

¹¹ Lailatul Mawaddah, "Attempted Assassination as *Mawani' Al-Irth* in KHI Article 173 Seen from the Perspective of *Maqasid al-Syari'Ah*," *Al-Madaris* 3, no. 1 (2022).

¹² Atik Riswantoro, "The Application of Article 185 of the Compilation of Islamic Law (KHI) Relating to the Settlement of Inheritance Disputes," *Journal of Law and Notary* 4, no. 1 (2020).

Third, Humaira A Potabuga who researched "Revocation of Parental Inheritance Rights for Violence Against Children" which was carried out in 2022.¹³ The type of research used is literature research with a normative approach. The results of the study show that parents who commit severe abuse cannot be prohibited from inheritance because the prohibition is basically an additional law following qisas. The side of the equation is the discussion of violence as a cancellation of inheritance rights. Meanwhile, the difference is that this study discusses domestic violence as a cancellation of inheritance rights according to KHI Article 173 from the perspective of the Shafi'i school.

Fourth, Riyan Ramdani and M. Najib Karim who researched "Severe Persecution as a Reason for Inheritance Barrier in the Compilation of Islamic Law Article 173 Letter A" which was carried out in 2020.¹⁴ The research methods used are normative juridids and empirical juridical methods. The results of the study show that KHI does not provide a clear understanding of severe persecution. The side of the equation is the discussion about the cancellation of inheritance rights in KHI article 173. Meanwhile, the difference is that this study discusses domestic violence as a cancellation of inheritance rights according to KHI Article 173 from the perspective of the Shafi'i school.

Based on previous research, it can be concluded that some regulations regarding inheritance barriers in KHI have not been clearly defined and are not suitable for implementation. In contrast to previous studies that focused on one of the barriers to inheritance rights stated in KHI Article 173. This study examines more deeply about domestic violence as a cancellation of inheritance rights according to Article 173 of the KHI from the perspective of the Shafi'i school. The difference between Article 173 of the KHI which does not explicitly state that domestic violence can cancel inheritance rights and the agreement of scholars makes researchers interested in researching domestic violence as a cancellation of inheritance rights based on KHI Article 173 from the perspective of the Shafi'i school. In addition, the high number of domestic violence cases in Indonesia and the dominance of the Shafi'i school in the preparation of KHI make this researcher important and relevant to provide a deeper understanding of Islamic law on domestic violence cases in the context of inheritance law. This study aims to find the concept of domestic violence as a cancellation of inheritance rights based on Article 173 of the KHI and the perspective

¹³ Humaira A Potabuga, "Revocation of Parents' Inheritance Rights for Violence Against Children" (Thesis, UIN Sunan Kalijaga Yogyakarta, 2022).

¹⁴ Riyan Ramdani and M. Najib Karim, "Severe Persecution as a Reason for Barriers to Inheritance in the Complications of Islamic Law Article 173 Letter A," *Al-Ahwal Al-Syakhsyyah: Journal of Family Law and Islamic Justice* 1 (September 2020).

of the Shafi'i school of domestic violence as a cancellation of inheritance rights. Thus, this study is expected to clarify the position of domestic violence as a factor that cancels inheritance rights in Islamic law in Indonesia and can increase public awareness about the legal impact of acts of domestic violence, thereby encouraging the creation of a more harmonious family environment.

Research Methods

This study uses a qualitative approach. The qualitative approach is an approach that emphasizes natural and deep observation and understanding, presented descriptively and comprehensively interpreted. Qualitative refers to a research approach that produces data in the form of descriptive data. The descriptive data are sourced from the results of observations either in written, oral or behavioral form of the research subjects.¹⁵ The type of research used in this study is library research, which is a method of collecting data by reading, understanding and studying theories from various literature related to research topics.¹⁶ The data collection process is carried out through searching and compiling information from various literature sources, such as academic books, journal articles, and previous research results. The literature material obtained from the references is then critically and in detail analyzed to comprehensively strengthen the arguments and concepts built in the research.

Results and Discussion

Analysis of Domestic Violence as a Barrier to Inheritance Rights in Article 173 of the Criminal Code

Domestic violence (KDRT) is not always in the form of physical violence. There are four forms of domestic violence:

a. Physical violence

Forms of violence on the victim's body. Resulting in pain, getting sick, or severe injury. Examples: slapping, punching, persecution, and so on.

b. Psychological violence

Forms of violence in psychological conditions. As a result, the victim feels fearful, unconfident, loses the ability to act, feels helpless, and other suffering. Examples: *bullying*, *gaslighting*, and so on.

c. Sexual violence

¹⁵ Marinu Waruwu, "Qualitative Research Approaches: Concepts, Procedures, Advantages and Roles in the Field of Education," *Affecting: Journal of Educational Research and Evaluation* 5, no. 2 (2024), p. 200.

¹⁶ Mestika Zed, *Literature Research Method*, 3 ed. (Indonesian Torch Library Foundation, 2014), p. 3.

Forms of violence in a sexual context. Even though they already have a legal relationship, like husband and wife, forced sexual relations are prohibited and include violence.

d. Household neglect

Acts of neglect of people within the scope of the household are a form of domestic violence. In addition, restrictions or prohibitions on decent work so that the victim is under one's control and resulting in economic dependence are also included in household neglect.¹⁷

There is no legal provision that explicitly states that domestic violence can prevent a person from obtaining inheritance rights. However, domestic violence can be associated with the provisions of Article 173 of the Criminal Code, which states that:

"A person is prevented from becoming an heir if by the decision of a judge who has permanent legal force, he is punished because: a. Being blamed for killing or attempting to kill or severely mistreating heirs; b. Guilty of defamatory filing a complaint that the heir has committed a crime that is threatened with a penalty of 5 years in prison or a more severe punishment."

Based on Article 173 of the KHI, it can be taken that the causes of inheritance barrier There are four: murder, attempted murder, severe persecution of the heir and slander (slandering the heir for a crime that is threatened with 5 years in prison or heavier). Thus, although it does not explicitly mention the term "domestic violence", acts of domestic violence that meet these elements can be categorized as a barrier to inheritance rights according to Article 173 of the Criminal Code. Murder comes from the word kill which means deadly, taking away life. In KBBI, the word kill means to intentionally end a life.¹⁸ To kill means to make it die. Murder is a person or tool that kills and murder means the act of killing, an act or a murderous thing. An act can be said to be murder is an act by anyone who deliberately takes the life of another person.¹⁹

From the perspective of Islamic law and positive Indonesian law, murder is classified as a serious crime. Article 173 of the KHI expressly stipulates that murder committed by the heir against the heir will be a barrier for the perpetrator from obtaining an inheritance. This applies on the condition that with a decision the judge who has the force of law still declares that the heir is guilty of killing the heir. This provision is in line with Article 838 of the Civil Code which states: *"Persons who are considered unfit to be heirs, and thus are unlikely to receive an inheritance, are:*

¹⁷<https://www.hukumonline.com/berita/a/kdrt-lt61bcb7f549792/?page=all>. Retrieved August 4, 2025.

¹⁸ <https://kbbi.kemdikbud.go.id/entri/bunuh>. Retrieved July 15, 2025.

¹⁹ Hilman Hadikusuma, *Indonesian Legal Language* (Alumni, 1992), p. 24.

- a. He who has been shunned by punishment for killing or attempting to kill the deceased;
- b. He who by the decision of the Judge has been blamed for slanderous accusations against the heir, that the heir has committed a crime that is threatened with a prison sentence of five years or a heavier punishment;
- c. He who has prevented the deceased person by force or manifest act from making or retracting his will;
- d. He who has embezzled. destroy or forge the will of the deceased."

In Indonesian criminal law, murder is divided into several types. based on what is stated in the Criminal Code. Murder or crime against life is of 2 (two) types, namely intentional and accidental killing: (1) Murder committed intentionally (*dolus misdrioven*). This crime is regulated in the Second Book of Chapter XIX of the Criminal Code Article 338 to Article 350. (2) Crimes against life committed unintentionally (*culpose misdrioven*). This crime is regulated in the Second Book of Chapter XXI of the Criminal Code Article 359.²⁰ Meanwhile, the KHI and Civil Code do not mention the types of murder in question that can hinder inheritance rights, thus giving an indication that everything that includes murder, whether intentional or accidental murder, can be an inheritance barrier.²¹

The PKDRT Law states that there is domestic violence that results in murder. Article 44 Number 3 of the PKDRT Law which reads: (3) *In the event that the act as intended in paragraph (2) results in the death of the victim, it shall be punished with imprisonment for a maximum of 15 (fifteen) years or a maximum fine of Rp 45,000,000.00 (forty-five million rupiah).* There is a fundamental difference between the article on persecution that results in the death of the victim (Article 44 paragraph (3) of the PKDRT Law) and the article on murder (Article 338 of the Criminal Code). In the murder article, there is an act that results in the death of another person intentionally, meaning that the murder is intended and is included in the intention. If the death is not intended, then it is not included in the murder article. Rather, it can enter into persecution that results in the death of people.²²

However, in some cases, there are also judges who do not apply Article 44 paragraph (3) of the PKDRT Law to the crime of domestic violence that results in the death of the victim, but look at the conception of the crime of murder in the Criminal Code. So which article is used

²⁰ Besse Muqita Rijal Mentari, "Criminal Witnesses to Murder in the Criminal Code with Islamic Law," *Al-Islah: Legal Scientific Journal* 23, no. 1 (2020).

²¹ Muh. Abdullah, "Murder as a Barrier to Receiving Inheritance (Comparative Study of Civil Law and Islamic Law)" (Thesis, Alauddin State Islamic University, 2010).

²² Nafiatul Munawaroh, "Domestic Violence to Death, Persecution or Murder?," *hukumonline.com*, October 2024, <https://www.hukumonline.com/klinik/a/kdrt-hingga-meninggal-penganiayaan-atau-pembunuhan-lt602efcc14f6c0/>, accessed August 7, 2025.

depends on the facts and evidence at trial.²³ Based on the explanation above, it can be concluded that the act of domestic violence (KDRT) that causes the victim's death is different from murder. Domestic violence that results in death can be categorized as persecution that results in the death of the victim unless the perpetrator intends to kill the victim from the beginning, but can also stand alone as a criminal act of murder. depending on the judge's ruling.

Attempted Murder as a Barrier to Inheritance Rights

Etymologically, an experiment can be interpreted as an attempt to do something or the intention to do something, but it does not reach the intended goal, or it has started to do something but is not completed due to obstacles or certain causes.²⁴ In KBBI, an experiment can be interpreted as an attempt to try something or the beginning of the implementation of a criminal event, but it is not completed due to certain things.²⁵ If the purpose or result of murder is the loss of a person's life, then an attempted murder is when the purpose of murder (loss of a person's life) cannot be carried out due to several reasons, such as resistance from the victim to the act of taking life carried out by the perpetrator.²⁶

Article 173 of the KHI expressly stipulates that attempted murder carried out by the heirs against the heir will be a barrier for the perpetrator from obtaining an inheritance. This applies on the condition that with a judge's decision that has the force of law still states that the heir is guilty of trying to kill the heir. Just like murder, this provision is also in line with Article 838 of the Civil Code. The crime of attempted murder in the Compilation of Islamic Law (KHI) occupies the same position as the crime of murder as a barrier to inheritance between heirs and heirs.²⁷ The crime of murder and attempted murder also have the same goal, which is to eliminate life. The reason for the attempted murder as a barrier to inheritance rights in KHI is due to the consideration of rejecting the *harm* contained in it and its implications for inheritance law.²⁸

Meanwhile, in criminal law, the basis for the crime of attempted murder is regulated in Article 53 jo. 338 of the Criminal Code. Article 53 of the Criminal Code concerning Probation (*poging*) which regulates the attempt to commit a crime. The article reads: "1. Attempting to commit a crime is punishable, if the intention for it has been proven and there is a commencement of the

²³ Renie Aryandani, "Husband Stabs Wife with a Toothbrush to Death, Domestic Violence or Murder?," *bukumonline.com*, May 2024.

²⁴ R. Sugandi, *Criminal Code and Its Explanation* (National Business, 1989), p. 64.

²⁵ <https://kbbi.web.id/coba>. Retrieved July 29, 2025.

²⁶ Jhon Hausen Sibuea and Boedi Prasetyo, "The Application of Criminal Punishment to Attempted Premeditated Murder Carried Out by Perpetrators (Study of Decision Number 150/Pid.B/2020/Pn Jkt.Utr & Decision Number 1607/Pid.B/2019/Pn Jkt. Utr)," *Rewang Rencang: Lex Generalis Law Journal* 5 (2024).

²⁷ Fauzan, "Attempted Murder as a Barrier to Inheritance," *Alhurriyah* 11 (2010).

²⁸ Fauzan, "Attempted Murder as a Barrier to Inheritance."

execution, and the non-completion of the execution, not solely due to his own will. 2. The maximum principal penalty for crimes, in the case of probation, is reduced by one-third. 3. If the crime is threatened with the death penalty or life imprisonment, the sentence of imprisonment shall be imposed for a maximum of fifteen years." And Article 338 of the Criminal Code concerning murder. This article is the main crime of murder, which if associated with Article 53 becomes the basis for attempted murder. The article reads: *"Whoever deliberately takes the life of another person shall be threatened with murder with imprisonment for a maximum of fifteen years."*

Based on the Criminal Code, there are three conditions for a probationary act to be punished:

1. There is an intention or will.
2. There is a beginning of implementation.
3. The implementation was not completed because of his own will.²⁹

In the case of criminal acts, intent is the differentiator between intentional and wrongful criminal acts. In jurisprudence, intention is often equated with intentionality in the delus *dolus*. Some scholars also consider that intention in an experiment is nothing but the same as intentionality.³⁰ So that in an attempted murder, there is a requirement that there is an intention to eliminate life, not just injure.

The experiment involves 3 phases: the thinking or planning phase, the preparation phase, and the execution phase.³¹ In order for the trial to be punishable, it is necessary that there is a beginning of the execution of the act, meaning that a person must have started the execution phase (the beginning of execution) of the crime, because it seems that the lawmakers intended that the preparation phase was not included in the field of probation that could be punished, let alone false thinking. However, there are differences in determining the implementation limit. First, subjective interprets the beginning of implementation as an intention and considers that the experiment needs to be punished because of the dangerous nature in the perpetrator so that the perpetrator's actions become unimportant. Second, the objective is to interpret the beginning of the implementation as the beginning of the implementation of the crime and considers that the experiment needs to be punished because of the dangerous nature of the act committed.³²

²⁹Fariaman Laia and Yonathan Sebastian Laowo, "Proving the Crime of Attempted Murder," *Journal Panah Keadilan* 1 (August 2022).

³⁰ Aksi Sinurat, *Experiment, Participation and Combined Criminal Acts (PPGTP)*, 1 ed. (Tangguh Denara Jaya, 2024), pp. 9 - 10.

³¹ Fauzan, "Attempted Murder as a Barrier to Inheritance."

³² Sinurat Action, *Experiment, Participation and Combined Criminal Acts (PPGTP)*, pp. 12 - 13.

Examples of Amat-Badu cases: (1) Amat borrows or buys a gun; (2) Amat took the gun to his house; (3) Amat trained himself to use the pistol, (4) Amat planned the shooting he would do; (5) Amat then carried a pistol from the Badu house; (6) Shortly after Amat saw Badu, he loaded the gun; (7) Strongly directing/aiming a gun at Badu; (8) Very close fire on Badu. If you look at factors number 1-8, the beginning of implementation according to subjective opinion can be assessed starting from (1), while according to objective opinion the beginning of implementation occurs at (6) or (7).³³

It is necessary to ensure that there are three elements (intention, initiation of implementation, and non-completion of the crime not due to one's own will) otherwise it cannot be declared as a probation crime. Indeed, researchers have not found a verdict that explicitly discusses attempted murder and inheritance rights. However, normatively Article 838 of the Civil Code and KHI clearly states that "attempted murder" is not just killing, which means that attempted murder has the same legal status as intentional murder. As a result, both intentional murder and attempted murder cause the perpetrator to be prevented (not entitled) to receive an inheritance.³⁴

Attempted murder can be called an imperfect murder because the purpose of the murder that has not yet been realized is the loss of life. The PKDRT Law does not explain attempted murder. As already explained, domestic violence is any act against a person that results in physical, sexual, psychological, and/or domestic suffering or neglect. If it is associated with an attempted murder that has permanent legal force. Researchers see that attempted murder is two different things unless the process involves violence either physical or psychological or others, so it can be included in domestic violence, but just like in the discussion of murder, it depends on the facts and evidence at trial. Persecution comes from the word persecution. In KBBI, the word persecution means cruel acts such as (torture, oppression), while persecution means arbitrary treatment (torture, oppression, and so on). And severe persecution is defined as an act of deliberate violence against a person that results in physical disability or death.³⁵

According to Satochid Kartanegara, in criminal law, persecution is defined as an act that is done deliberately to cause pain (*pijn*) or injury (*letsel*) to the body of another person.³⁶ What is meant by severe persecution is a criminal act that is deliberately committed to injure another person which

³³ Sinurat, *Experiment, Participation and Combined Criminal Acts (PPGTP)*, pp. 14 - 15.

³⁴ <https://halojpn.id/publik/d/permohonan/2023-f915>, accessed on 1 August 2025.

³⁵ <https://kbbi.web.id/aniaya>, accessed on August 2, 2025.

³⁶ Nelvita Purba, *Certain Crimes in Book II of the Criminal Code (KUHP)*, 1 ed. (VC. AA RIZK2, 2022), p. 79.

results in the victim suffering serious injuries or injuries that are impossible or there is no hope of recovery, and with these injuries or disabilities the victim cannot carry out activities as usual.³⁷

Persecution and violence are often considered the same in society, because basically persecution and violence are both unlawful acts that attack a person's physical or psychological integrity. Both can cause injury, suffering, or even death, and are subject to criminal sanctions based on the provisions of the Criminal Code. Although persecution does not always have to cause physical injury; (It can also include psychological suffering, depending on the form and consequences of the action). However, in general, in the Criminal Code, the focus of persecution remains on the presence of physical disturbances or real pain, while psychological suffering is more often accommodated in other criminal acts such as domestic violence (PKDRT Law No. 23 of 2004).³⁸ So, domestic violence has a wider scope than persecution, but domestic violence is limited to the scope of the household. Because although both can touch on physical and psychological aspects, persecution focuses more on acts that cause physical pain or injury directly, while violence has a wider scope, can be in the form of physical or psychological pressure, and does not always cause injury.

Just like murder and attempted murder, Article 173 of the KHI expressly stipulates that severe persecution committed by the heir against the heir will be a barrier for the perpetrator from obtaining an inheritance. This applies on the condition that with a decision of the judge who has the force of law, it still states that the heir is guilty of having severely mistreated the heir. However, in contrast to murder and attempted murder, severe persecution is not listed in Article 838 of the Civil Code. KHI did not make it clear what the purpose of the severe persecution was. Meanwhile, the Criminal Code regulates in detail the persecution as follows:

1. Article 351 of the Criminal Code (Persecution)
2. Article 352 of the Criminal Code (Minor Persecution)
3. Article 353 of the Criminal Code (Premeditated/planned persecution)
4. Article 354 of the Criminal Code (Gross Persecution)
5. Article 355 of the Criminal Code (Planned Serious Persecution)

³⁷ Harun Arrasid, "Severe Persecution and Slander as a Barrier to Inheritance (Comparative Analysis of Article 173 of KHI and Fiqh of the Shafi'i School in the Perspective of Maqzshid Syari'ah)" (Thesis, Langsa State Islamic Religious Institute, 2024).

³⁸ Renata Christha Auli, "Psychologically Abusing Girlfriends Including a Criminal Act?," *bukumonline.com*, July 2025, accessed on August 4, 2025.

6. Article 356 of the Criminal Code (Persecution in a manner and against certain qualified persons who are incriminating).³⁹

The reading of article 354 which regulates severe persecution is as follows:

1. Whoever deliberately seriously injures another person is threatened with severe persecution with a maximum prison sentence of eight years;
2. If the act results in death. The guilty person is threatened with imprisonment for a maximum of ten years.

According to the Article on severe persecution, "intentional" here is a special form of intentional persecution aimed at seriously injuring a person and does not include injuring, and the occurrence of pain, but serious injury. Meanwhile, serious injuries in Article 90 of the Criminal Code mean injuries that result in falling ill or getting injuries that do not give hope of healing at all, which poses a danger of death; resulting in the continuous inability to carry out the duties of the position or search work, losing one of the five senses; get severe disability; suffering from paralysis; impaired thinking for more than four weeks; or resulting in miscarriage or death of a woman's womb.

KHI in Article 173 does not specifically regulate special terms or conditions related to the cancellation of inheritance rights, but only requires a judge's decision that has permanent legal force. This shows that the KHI in this aspect is open and substantively dependent on the provisions of the national criminal law, especially the Criminal Code which is the main source of Indonesian criminal law. Thus, if the elements of a criminal act such as murder or severe persecution have been fulfilled in the criminal justice process and decided by a decision with permanent legal force, the conditions related to the cancellation of inheritance rights in the KHI have been met. Furthermore, the provisions of Article 356 of the Criminal Code make it clear that if the persecution is carried out against nuclear family members, such as parents, spouses, or children, the criminal threat can be aggravated by one-third. This provision shows that acts of severe persecution that occur within the scope of the household are considered more serious by the criminal law than the persecution of others.

Analysis of Article 173 Letter B of the KHI concerning Defamation as a Barrier to Inheritance Rights

In KBBI, the word *fitnah* means false or untruthful words that are spread with the intention of discrediting people, such as: tarnishing good name and harming people's honor.⁴⁰

³⁹ Nelvita Purba, *Certain Crimes in Book II of the Criminal Code (KUHP)*, p. 78.

⁴⁰ <https://kbbi.web.id/fitnah>, accessed on August 3, 2025.

Meanwhile, in positive law in Indonesia, slander is an act committed by a person with the intention of attacking, insulting and defaming a person by accusing someone.⁴¹ In Islamic law, the act of defamation is categorized as a form of crime whose effect is not only dangerous for a person's life, but also dangerous for the life of society in general.⁴² In Indonesia's positive law, defamation is one of the criminal acts, as stated in Article 311 paragraph (1) of the Criminal Code which reads:

"If the person who commits the crime of defamation or written defamation is allowed to prove what is alleged to be true, does not prove it, and the accusation is made contrary to what is known, then he is threatened with defamation with a maximum prison sentence of four years."

Meanwhile, the meaning of slander in KHI is that a person deliberately submits a false case to the police so that the person who is slandered is released purely by the court because it is not proven and the person who filed the false case is proven guilty of committing slander.⁴³ Article 173 of the KHI expressly stipulates that defamation against the heir committed by the heir against the heir will be a barrier for the perpetrator from obtaining an inheritance. Based on the provisions of Article 173 of the KHI, this applies on the condition that there is a decision that has the force of law still stating that the heir is guilty of defamation, defamation by filing a complaint, and for a crime that is threatened with a sentence of 5 years or more.

Here are examples of some crimes or criminal acts that are expressly threatened with a sentence of 5 years in prison or more:

1. Possession of class I narcotics (≥ 5 grams) is threatened with life imprisonment or a minimum prison sentence. 5 years – max. 20 years. This is regulated in Article 112 paragraph (2) of Law No. 35 of 2009 concerning Narcotics.
2. Terrorism offenses are punishable by imprisonment. 5 years – max. 20 years, life imprisonment or the death penalty. This is regulated in Article 6 of Law No. 5 of 2018.
3. Rape of children is threatened with imprisonment min. 5 years – max. 15 years. This is regulated in Article 81 paragraph (1) of Law No. 35 of 2014.

Just like murder and attempted murder, the provisions of defamation can be a barrier to inheritance in the KHI and are also in line with Article 838 paragraph (2) of the Civil Code. However, there is no specific statement or article that explicitly states that defamation is included in the category of domestic violence. However, the impact of slander can also be very detrimental

⁴¹ Handoko, "Fitnah as a Barrier to Inheritance in the Compilation of Islamic Law (Article 173 b Analysis Study)" (Thesis, Curup State Islamic Religious Institute, 2019).

⁴² Handoko, "Slander as a Barrier to Inheritance in the Compilation of Islamic Law (Article 173 b) Analysis Study."

⁴³ Akh. Syamsul Muniri and Nur Shofa Ulfyati, "A Study of the Compilation of Islamic Law (KHI) on Defamation as an Obstacle as Heirs (Analysis of Positive Law and Religious Norms in Indonesia)," *Mabahist*.

psychologically, such as causing shame, anxiety, depression, or loss of confidence. Which is included in psychological violence. Especially if a person is slandered for committing a crime that is threatened with 5 years in prison or more. Such as being slandered for raping children. This kind of accusation will give a heavy psychological burden than defamation against acts whose criminal threat is less than 5 years in prison, such as being defamed for minor persecution with a maximum threat of 3 months in prison (Article 352 of the Criminal Code).

The Perspective of the Shafi'i Madhhab On Domestic Violence as a Barrier to Heirs' Rights

In Islam, there are 3 cancellations of inheritance rights agreed upon by scholars, among which there is Imam Shafi'i,⁴⁴ namely:

1. Murder: a person who kills an heir does not get an inheritance from the heir he killed.

Based on the words of the Prophet:

الْقَاتِلُ لَا يَرِثُ

It means: "The murderer is not entitled to inheritance."⁴⁵ Another reason for the murderer being prevented from inheritance is that the murderer has indirectly hastened the occurrence of the cause of inheritance, namely the death of the heir in a null and void way, so that he is punished by being deprived of his right to what he wants (inheritance), so that he is deterred from his actions, and because inheritance caused by murder can result in damage.⁴⁶

In Islamic law, murder is categorized into three types: intentional murder (*qatlu al-'amd*), intentional murder (*qatlu syibhill-'amd*), and accidental murder (*qatlu al-khabtha*).⁴⁷ There are differences of opinion about murder that can invalidate inheritance. In the view of the Shafi'i school, the murderer does not get the right of inheritance from the one he kills under any circumstances, even though the murder is a murder with a right, such as *qishash* or the work of an executioner or the murderer is a madman and so on. So according to the Shafi'i madhhab, every murder of an heir can abort the right of inheritance because all forms and causes of murder are a barrier to inheritance according to Imam Shafi'i.⁴⁸ The opinion of Imam Shafi'i adheres to the generality of the words of the Prophet:

لَا يَرِثُ الْقَاتِلُ شَيْئًا

⁴⁴ Usamah bin Sa'id et al., *Mausu'ah al-Ijma' fi al-fiqh al-Islami*, 1 ed. (Dar Al-Fadhilah, 1433), vol. 8, p. 847.

⁴⁵ Ibn Majah, Abu 'Abdillah Muhammad bin Yazid Al-Qazwini, *Sunan Ibni Majah*, 1 ed. (Al-Dar al-Risalah al-'Alamiyyah, 1430), vol. 3, p. 2645.

⁴⁶ Wahbah Az-Zuhaili, *Islamic Fiqh Wa Adillatuhu*, 4 (Dar Al-Fikr, 1433), vol. 10, p. 7715.

⁴⁷ Mustafa Al-Khan et al., *Al-Fiqh Al-Manhaji Ala Al-Mazhab Ash-Shafi'i*, 4 ed. (Dar Al-Qalam, 1413), vol. 8, p. 12.

⁴⁸ Abu Hasan Ali bin Muhammad Al-Mawardi, *Al-Hawi Al-Kabir Fi Fiqih Madzhabi Al-Imam Ash-Shafi'i*, 1 ed. (Dar Al-Kutub Al-'Ilmiyah, 1419), vol. 8, p. 85.

Meaning: "the murderer does not get any inheritance."⁴⁹

2. Religious differences: a Muslim cannot inherit from an infidel, and a disbeliever cannot inherit from a Muslim. Based on the words of the Prophet:

لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ، وَلَا الْكَافِرُ الْمُسْلِمَ

Meaning: "A Muslim cannot inherit a disbeliever, and a disbeliever cannot inherit a Muslim."⁵⁰

3. Slavery: a slave does not get an inheritance and does not inherit. Because a slave and his property belong to his master.

These three things are obstacles agreed upon by scholars in Islamic law, which if one of these three things is in an heir, then his right to get a share of the inheritance is lost. In the Shafi'i madhhab. Imam Shafi'i added 3 barriers to inheritance, namely: Differences in the status of disbelievers, *dzimmi* and *barbi*. What is famous (in the Shafi'i madhhab) is that there is no inheritance between *barbi* and *dzimmi* because of the disconnection of *muwaalah* (mutual protection) between the two. While the kafir *mu'ahad* and *musta'man* are included in the kafir *dzimmi*. Apostates, apostates cannot inherit either from Muslims or disbelievers, nor can they be inherited. In fact, his property becomes *fai'* (spoil) for baitulmal, whether the person gets the property while still a Muslim or after apostasy. This is based on a similar hadith on the discussion of religious differences, therefore some scholars include this discussion in the category of religious differences. *Ad-Daur al-Hukmi* (the law that revolves). That is, inheritance causes the necessity of the absence of inheritance. Like a brother (heir) who receives the inheritance recognizes (a person) as the son of the heir and thus himself (the brother) becomes uninherited because *he is mahjub* (obstructed) by the heir son (whom he recognizes). So that the confession is not considered and the child does not get an inheritance because it causes the law to turn.⁵¹

So that there are six barriers to inheritance according to the Shafi'i madhhab, namely: murder, religious differences, slavery, differences in pagan status, apostasy and *ad-daur al-hukmi* (the law that revolves). In the KHI inheritance barrier There are four: murder, attempted murder, severe persecution and defamation. of the inheritance barrier stated in Article 173 of the Compilation of Islamic Law (KHI), only the element of murder is completely in line with the views of the Shafi'i school. As for other elements listed in Article 173 of the KHI such as attempted

⁴⁹ Abu Bakr Ahmad bin Husain Al-Baihaqi, *As-Sunan As-Saghir*, 1 ed. (Jami'ah ad-Dirasat al-Islamiyah, 1410), jld. 3, hlm. 263.

⁵⁰ Abu 'Abdillah Muhammad bin Isma'il al-Bukhari, *Al-Jami' al-Musnad as-Sabeeh al-Mukhtasar min The Age of the Prophet Sallallahu 'Alaihi wa Sallam wa Sunanib wa Ayyamih*, 1 ed. (Dar at-Ta'shil, 1433), vol. 8, p. 430.

⁵¹ Az-Zuhaili, *Islamic Fiqh Wa Adillatuhu*, vol. 10, pp. 7712 - 7713.

murder, severe persecution, and slander that results in death, there is no explanation in Islamic law sources, including in the fiqh of the Shafi'i madhhab, as a barrier to inheritance.

Domestic violence is not Islamic behavior. Imam Shafi'i views domestic violence as not the behavior of the Prophet.⁵² However, domestic violence perpetrators often justify their actions based on Surah An-Nisa verse 34. Allat Ta'ala said:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ ۚ فَالْصَّالِحَاتُ قَنَاطٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ ۚ وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ ۚ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا

Meaning: The men are the leaders of the women, because Allah has given some of them (men) more than others (women), and because they (men) have provided for some of their wealth. Therefore, a righteous woman is one who is obedient to Allah and takes care of herself when her husband is not around, because Allah has taken care of (them). The women whose nusyuz you are worried about, then advise them and separate them in their beds, and beat them. Then if they obey you, then do not look for a way to trouble them. Indeed, Allah is Exalted and Exalted.⁵³

At first glance, this verse seems to allow the beating of women. Imam Shafi'i explained that the way to straighten a wife who *is nusyuz* (disobedient and disobedient) first is to advise, then be silent, and the last one is allowed to hit. So it is necessary to do two stages first, then it is allowed, which means that hitting is the last option. Imam Shafi'i also said that it is permissible for them to hit and it is also permissible to forgive and it is better not to hit.⁵⁴ Then it should be noted that the intent of hitting is to educate the blow. An educational punch is a punch that aims to make you realize and show that as a husband you don't like the wife's behavior as such. So that the blow is not to vent emotions, hurt, and hurt.⁵⁵

Imam Shafi'i added that it is not permissible to remain silent and hit without explaining the location of the fault. Silence should also not be more than three days because the Prophet صلى الله عليه وسلم forbade silence for more than three days. And hitting should avoid the face area and the punch should not injure or scar.⁵⁶ Ibn Abbas explained that the blow was just using miswak or a pillow, not using a stick or whip. Narrated from 'Atha bin Abi Rabah he said:

قُلْتُ لِابْنِ عَبَّاسٍ: مَا الضَّرْبُ غَيْرُ الْمُبْرَحِ؟ قَالَ: السَّوَاكُ وَنَحْوُهُ

⁵² Zulfa Hudiyan, "Domestic Violence Is Disgraceful Or Unopenable?," *stainkepri.ac.id*, February 2022, accessed on August 8, 2025.

⁵³ QS. An-Nisa (4): 34.

⁵⁴ Abu Abdullah Muhammad bin Idris as-Shafi'i, *Al-Umm*, 2nd ed. (Dar Al-Fikr, 1403), vol. 5, p. 121.

⁵⁵ Raehanul Bahraen, "Tafsir of the Verse of Hitting the Wife: Hit with a Siwak or a Small Pillow," *muslimafiyah.com*, February 2023, accessed August 8, 2025.

⁵⁶ asy-Shafi'i, *Al-Umm*, vol. 5, p. Id. at 208.

Meaning: I asked Ibn Abbas, 'What is the meaning of a painless beating?' Ibn Abbas replied, "Strike with miswak or something similar to it."⁵⁷

When hitting, it is also required to avoid the face area. Based on the words of the Prophet Muhammad PBUH, as follows:

وَلَا تُضْرِبِ الْوَجْهَ وَلَا تُقَبِّحْ وَلَا تَهْجُرْ إِلَّا فِي الْبَيْتِ

Meaning: "And thou shalt not smite thy wife in her face, nor slander her, nor do hajr (silence of her wife) except at home."⁵⁸ In addition to avoiding the face, hitting the wife is not with a punch that leaves a mark.⁵⁹

The Prophet Muhammad said:

وَلَكُمْ عَلَيْهِنَّ أَنْ لَا يُوطِئَنَّ فُرْشَكُمْ أَحَدًا تَكْرَهُونَهُ. فَإِنْ فَعَلَنَّ ذَلِكَ فَاضْرِبُوهُنَّ ضَرْبًا غَيْرَ مُبْرِحٍ

Meaning: "The wife's obligation for you is not to have your tapestry occupied by anyone you don't like. If they do so, strike them with a blow that does not leave a mark"⁶⁰

From this, it can be seen that Islam does not support the existence of domestic violence at all. The blows allowed in Surah An-Nisa are blows that do not hurt, so this is not included in domestic violence. Permissible punches must also meet the following criteria: Punches with the intention of educating rather than hurting or emotion, avoiding the face area, punches must not be scarring.

Conclusion

Based on the above problems and explanations, the conclusion that can be drawn is that Article 173 of the KHI, acts of domestic violence (KDRT) that meet the elements of murder, attempted murder, severe persecution, and defamation against the heirs, with a court decision with permanent legal force, can be a barrier for the perpetrator to obtain inheritance rights. Although KHI does not explicitly use the term "domestic violence", the scope of acts regulated in Article 173 can include forms of domestic violence as regulated in the PKDRT Law, both physical and psychological, as long as they meet the qualifications of the criminal acts mentioned and the criminal threat according to the provisions. However, this determination still depends on the judge's decision and should not be decided arbitrarily. The barriers to inheritance rights that are explicitly recognized according to the perspective of the Shafi'i School are murder in any form, religious differences, slavery, differences in pagan status, apostasy, and *ad-daur al-hukmi* (the law that revolves), so that domestic violence only becomes a barrier to inheritance if the act reaches the level of murder of the heirs. In the Shafi'i Madhhab, domestic violence is not allowed. Islam

⁵⁷ Muhammad bin Jarir At-Thabari, *Tafsir At-Thabari*, 1 ed. (Dar Hijrah, 1422), vol. 6, p. 722.

⁵⁸ Sulaiman bin Al-Ash'ats Abu Daud, *Sunan Abi Daud* (Mathba'ah al-Anshariyyah bi Delhi, 1323), vol. 2, p. 210.

⁵⁹ Muhammad Abduh Tuasikal, "Domestic Violence, Husband Hits Wife's Face," *Rumaysbo.com*, November 2014, accessed August 8, 2025.

⁶⁰ Abu Husayn Muslim bin Hajjaj, *Al-Jami' As-Shahih* (Dar at-Taba'at al-Amirah, 1334), vol. 4, p. 38.

only allows light blows to educate a *nusyuz wife* without emotion, not in the face, and without a trace.

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