

Domestic Violence in the Perspective of Civil and Islamic Criminal Law

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Abstract: The cases of domestic violence in Indonesia tend to increase from time to time. Based on data released by the National Commission on Violence Against Women in 2020, the number of domestic violence complaints received was recorded at 4,371, an increase from 4,322 cases in the previous year. In positive law, domestic violence is regulated in the Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence whereas, in the perspective of Islamic criminal law, domestic violence is classified as *jarimah takzīr* (criminal acts where the legal provisions are left to the discretion of the authorities). This research discusses domestic violence in Bandung and examines the methods for resolving cases at the Religious Courts and the Bandung Police. The aim is to compare the characteristics and methods of resolving cases in the two institutions. This research is classified as field research using comparative methods. Data was obtained from the document available at the Bandung Religious Court and the Bandung City Police Station. This research finds that more domestic violence cases in Bandung City were resolved through police rather than Religious Courts. This research concludes that although both Islamic Law and Positive Law view domestic violence as a criminal act, there are differences in the methods of resolving them in the Religious Courts and Bandung Police. This is because the competence of each institution is different. The Religious Court only handles the civil side, while the Bandung Police handles the criminal side.

Keywords: Domestic Violence, Polrestabes, Religious Courts

Abstrak: Kasus Kekerasan Dalam Rumah Tangga (KDRT) di Indonesia semakin meningkat dari waktu ke waktu. Berdasarkan data yang dikeluarkan oleh Komnas Perempuan pada tahun 2020, jumlah pengaduan KDRT yang masuk tercatat sebanyak 4.371 pengaduan, meningkat dari 4.322 kasus pada tahun sebelumnya. Di dalam perspektif hukum pidana Islam, tindak pidana KDRT tergolong ke dalam *jarimah takzīr* (tindak pidana yang ketentuan hukumnya diserahkan kepada kebijakan penguasa) sedangkan dalam hukum positif, tindak pidana KDRT diatur dalam Undang-Undang Republik Indonesia Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga. Penelitian ini membahas tentang KDRT di kota Bandung sekaligus menelaah metode penyelesaian kasus di Pengadilan Agama dan di Polrestabes Bandung. Tujuannya untuk mengetahui bagaimana karakteristik sekaligus metode penyelesaian perkaranya di kedua lembaga tersebut. Penelitian ini tergolong sebagai

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penelitian lapangan yang menggunakan metode komparatif. Data diperoleh dari catatan kasus KDRT yang ada di Pengadilan Agama Bandung dan di Polrestabes Bandung. Penelitian ini menemukan fakta bahwa kasus KDRT di Kota Bandung lebih banyak diselesaikan melalui kepolisian ketimbang Pengadilan Agama. Selanjutnya penelitian ini menyimpulkan bahwa meskipun hukum Islam dan hukum positif sama-sama memandang KDRT sebagai suatu perbuatan pidana, namun dalam penyelesaiannya di Pengadilan Agama dan Polrestabes Bandung terdapat perbedaan. Hal ini dikarenakan kompetensi masing-masing lembaga tersebut memang berbeda. Pengadilan Agama hanya menangani sisi perdatanya, sementara Polrestabes Bandung menangani sisi tindak pidananya.

Kata kunci: Kekerasan Dalam Rumah Tangga, Polrestabes, Pengadilan Agama

Introduction

The development of domestic violence cases in Indonesia from year to year shows a worrying picture. Every year no less than 4,000 cases of domestic violence occur in Indonesia. Based on data released by the National Commission on Violence Against Women, the number of complaints of domestic violence cases, abbreviated as KDRT, which entered the National Commission on Violence Against Women in 2022 was recorded at 4,322 cases. Furthermore, in 2023 the number increased to 4,371 cases. This number shows that the National Commission on Violence Against Women receives an average of 12 complaints every day.¹

In the province of West Java, with the same data source, the number of domestic violence cases recorded was 61,139 cases (594 cases entered to the National Commission on Violence Against Women, 60,084 cases to Badilag, 461 cases to other legal service institutions). In the city of Bandung itself, the number of domestic violence cases over the past five years has reached 1,054 cases. The highest, namely 412 cases in 2022, 119 cases in 2021, 186 cases in 2020.²

Citing data released by the Central Statistics Agency (BPS) of Bandung City, of the 412 cases of domestic violence that occurred in

¹ Komnas Perempuan, *CATAHU 2023: Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2022 - Kekerasan Terhadap Perempuan di Ranah Publik Dan Negara: Minimnya Perlindungan dan Pemulihan*, CATAHU (Jakarta: Komisi Nasional Anti Kekerasan terhadap Perempuan (Komnas Perempuan), 2023).

² Sudirman Wamad, 'Seribuan Kasus KDRT Terjadi di Bandung Selama Lima Tahun', *Detik.Com*, 2023 <<https://www.detik.com/jabar/berita/d-6594677/seribuan-kasus-kdrt-terjadi-di-bandung-selama-lima-tahun>> [accessed 24 September 2023].

2022, the most cases occurred in Coblong District (32 cases), then in Kiaracondong District (25 cases), then in Lengkong and Batununggal Districts, 22 cases each, and in Cicendo as many as 18 cases. The fewest cases of domestic violence occurred in Cinambo District (2 cases), then in Gedebage District (3 cases), in Bandung Wetan (5 cases), and in Bojongloa Kidul (7 cases).³

The data released by BPS above is only based on reports/complaints received by the institution. Apart from that, it is believed that there are many more similar unreported cases that occur in society, the number of which exceeds the existing figure. This is because victims are generally reluctant to report. After all, there is a stigma in society that domestic violence is a disgrace in the household and does not need to be brought to the public domain. So, when a victim reports the perpetrator of domestic violence to the authorities, the public not only highlights the perpetrator's mistakes but also regrets the victim for reporting the closest person, who is the father or mother of their children. This is what causes many cases of domestic violence not to be revealed to the public because the victim is embarrassed, reluctant, or even afraid of being blamed for revealing the disgrace in their household.⁴

Indeed, the phenomenon of domestic violence is like an iceberg, it looks small on the surface, but big underneath. With the enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, it is hoped that the public will know the contents and objectives of the Law so that more people will dare to report the incident and at the same time indirectly prevent people from doing so.⁵

The phenomenon of domestic violence has indeed attracted the attention of many researchers, not only from domestic researchers but also from abroad. Among these researchers, one of them is Addieningrum, et al. who conducted a study entitled "Efforts to Handle Wives Victims of

³ BPS Kota Bandung, *Kota Bandung dalam Angka/Bandung Municipality in Figures 2022*, 32730.2203 (Bandung: BPS Kota Bandung/BPS-Statistics of Bandung Municipality, 2022).

⁴ Firdos Firdos, Eko Setiawan, and Nadila Duka Sahara, 'Pelatihan Paralegal Bantuan Hukum Korban Kekerasan Dalam Rumah Tangga di Kelurahan Jayengan Kecamatan Serengan Kota Surakarta', *Jurnal Pengabdian Mandiri*, 1.6 (2022): 945–54.

⁵ Firdos, Setiawan, and Sahara.

Domestic Violence: Analytical Study at the Batam City Religious Court in 2019)".⁶ Next are Anggraeni and Ardianto who conducted a study entitled "How the Police Handle Domestic Violence (KDRT) Cases: Semarang Police Case Study".⁷ Fauzan Mas'ar, Zulkarnain, and Irwansyah who discussed "Analysis of *Nusyûz* in Households (Comparative Study of Islamic Law and Law No. 23 of 2004 on Domestic Violence)",⁸ including Syarifuddin who also conducted a study entitled "Law Enforcement Against Perpetrators of Domestic Violence (Research Study at the Medan Police)".⁹

This study is different from previous studies in that it combines theoretical and empirical studies and focuses on the mechanisms for handling and resolving domestic violence cases in two government institutions, namely the religious court institution (Bandung Religious Court) and the police institution (Bandung Police).

Research Method

This research is descriptive with a comparative study approach. It not only describes but also compares the theory and practice of preventing domestic violence and legal protection for victims. Data were collected using data collection techniques in the form of observation, interviews, and documentation. The research location was chosen at the Bandung Religious Court and Bandung City Police, the areas with the highest domestic violence cases in West Java. Data on domestic violence cases

⁶ Fithri Mehdini Addieningrum, Neri Aslina, and Febry Andini, 'Upaya Penanganan Terhadap Istri Korban Kekerasan Dalam Rumah Tangga (KDRT): (Studi Analisis Pada Pengadilan Agama Kota Batam Tahun 2019)', *Addayyan*, 15.2 (2020) <<https://www.jurnalstaiibnusina.ac.id/index.php/AD/article/view/49>>.

⁷ Anggia Putri Anggraeni and Hendra Try Ardianto, 'Bagaimana Polisi Menangani Kasus Kekerasan Dalam Rumah Tangga (KDRT): Studi Kasus Polrestabes Semarang', *Ijd-Demos*, 2.3 (2020) <<https://doi.org/10.37950/ijd.v2i3.68>>.

⁸ Fauzan Mas'ar, Zulkarnain Zulkarnain, and Irwansyah Irwansyah, 'Analisis *Nusyûz* dalam Rumah Tangga (Studi Komparasi Hukum Islam dan UU PKDRT No. 23 Tahun 2004)', *al-Mashlahah Jurnal Hukum Islam dan Pranata Sosial*, 10.01 (2022): 197 <<https://doi.org/10.30868/am.v10i01.2442>>. About *nusyûz* see Alamsyah, Alamsyah. "Reconstruction of the Concepts of *Nusyûz* in the Feminist Perspectives." *Al-Adalah*, 15.2 (2019): 293-306.

⁹ Syarifuddin Syarifuddin, 'Penegakan Hukum Terhadap Pelaku Tindak Pidana Kekerasan Dalam Rumah Tangga (Studi Penelitian pada Polrestabes Medan)', *Jurnal Hukum Kaidah: Media Komunikasi dan Informasi Hukum dan Masyarakat*, 20.2 (2021): 193–205.

in the Bandung Religious Court & Police areas that were analyzed and compared for their effectiveness were data from 2022-2023 which aimed to be more up-to-date and related to current conditions. The validity of the data was tested using quantitative testing techniques, compared with each other, and, then, analyzed to obtain conclusions.

Results and Discussion

Domestic Violence in the Perspective of Indonesian Criminal Law

Violence in criminology is defined as an act that causes harm to the body. Thus, violence is classified as a type of criminal act. According to Sanford Kadish, quoted by Husen A.R, violence is any unlawful act, either in the form of real action or criticism, which has the potential to damage or injure property rights.¹⁰ La Jamaa emphasized that any act that uses physical force, such as hitting with a hand or weapon, kicking, and so on, or making someone faint or helpless (weak) is called violence.¹¹

Furthermore, Article 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (referred to as the PKDRT Law) explains that what is meant by domestic violence is: "Any act against a person, especially women, which results in misery or suffering physically, sexually, psychologically and, or neglect in the household, including threats to commit acts, coercion, or unlawful deprivation of rights. Freedom within the scope of the household."¹²

The phenomenon of domestic violence does not only occur to household members but can also occur to other people in a household, such as children, siblings, parents, or domestic workers. Specifically,

¹⁰ Agustina Rahayu Husein, 'Role of Damang (Tribal Chief) on Domestic Violence Cases (Study at Palangka Raya City, Indonesia)', *Journal of Law and Legal Reform*, 2.3 (2021): 365–78 <<https://doi.org/10.15294/jllr.v2i2.46534>>. See also Zaimatus Sa'diyah. "The Settlement of Domestic Violence Cases (KDRT) Based on Islamic Values and Local Wisdom." *Al-Adalah*, 16.2 (2019): 311-330.

¹¹ La Jamaa and Hadidjah, *Hukum Islam & Undang-Undang Anti Kekerasan Dalam Rumah Tangga* (Surabaya: Bina Ilmu, 2008), p. 45.

¹² Misye Herlin Lesussa, Reimon Supusepa, and Denny Latumaerissa, 'Tindak Pidana Kekerasan Dalam Rumah Tangga Menurut Kajian Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga', *TATOHI: Jurnal Ilmu Hukum*, 1.5 (2021): 474–80 <<https://doi.org/10.47268/tatohi.v1i5.631>>.

regarding violence against children in Bandung City, the Bandung City Women and Children Empowerment Service (DP3A) throughout 2020 has handled 431 complaints involving violence against children. Of the 431 cases of violence against children that occurred in 2020, 155 of them were psychological violence, 69 were neglect violence, and 55 were physical violence.¹³

As for domestic workers, according to Lita Anggraini, National Coordinator of the National Network for Advocacy of Domestic Workers (JALA PRT), there were 217 cases of violence against domestic workers in Indonesia that were physical and non-physical, even multi-type, namely physical violence, sexual harassment, psychological and financial.¹⁴ Such Cases of violence are not discussed in detail in this article because the focus of the study is limited to cases of domestic violence between husband and wife, while cases of domestic violence against children, parents, siblings, and domestic workers are not discussed.

In handling domestic violence, victim reports play an important role in preventing and protecting victims of domestic violence that may be repeated by the perpetrator. To answer this need, Law Number 23 of 2004 Article 13 concerning the Elimination of Domestic Violence expands its reach to the general public so that anyone, whether it is a family, activist, social organization, or any party outside the police, lawyers, or courts, can receive reports and provide temporary protection to victims of violence so that their condition improves so that they can reveal the chronology of the violence they experienced.

Factors Causing Domestic Violence

Several factors encourage domestic violence including First, personal factors (alcoholism, temperament, or mental disorders). Second, family

¹³ Sarah Ashilah, 'Data Kekerasan terhadap Anak di Kota Bandung 2020, Terbanyak Berupa Kekerasan Psikis', *BandungBergerak.id* <<https://bandungbergerak.id/article/detail/988/data-kekerasan-terhadap-anak-di-kota-bandung-2020-terbanyak-berupa-kekerasan-psikis>> [accessed 24 October 2023].

¹⁴ Fikriyana Shofwatun, 'Legal Protection of Domestic Workers Who Victims of Domestic Violence in Banyumas Regency', *UMPurwokerto Law Review*, 2.1 (2021): 18 <<https://doi.org/10.30595/umplr.v2i1.9260>>.

factors, include inadequate parenting patterns, disputes between husband and wife, poverty/low family income, and involvement of outsiders in household problems). The third factor is the environment/society. This includes certain issues such as population density, high unemployment rates due to lack of employment opportunities, high crime rates, drug trafficking, weak law enforcement and protection for victims, and others.¹⁵

From a broader perspective, domestic violence can occur due to the low ability of family members to adapt to each other, so family members who have power and strength tend to use dominance and exploitation of weaker family members. This is related to the patriarchal culture where men as heads of households have great obligations and responsibilities to meet all household needs. While on the other hand, women are responsible for managing the household as well as caring for children which makes them tired and run out of time to complete household tasks.¹⁶

In addition, the *nusyûz* (disobedient) attitude of a wife towards her husband, in many cases, can also trigger conflicts that then end in domestic violence. *Nusyûz* is the main cause of divorce and is one of the main causes of domestic violence. This *nusyûz* attitude can be reflected in the form of reluctance to carry out household responsibilities, the wife's reluctance to serve her husband when there are no obstacles such as menstruation or illness, having an affair, or other attitudes/actions that can trigger the husband's anger.¹⁷

Beyond all that, domestic violence can also arise as an impact of environmental intervention outside the family that influences the attitudes of family members, especially parents or heads of families, which is reflected in the exploitation of family members. In addition, how the

¹⁵ Husein.

¹⁶ Sutiawati Sutiawati and Jasmaniar Jasmaniar, 'Kekerasan Dalam Rumah Tangga dan Pandemi: Suatu Tinjauan Terhadap Efektivitas Perlindungan Hukum Bagi Korban', *UNES Law Review*, 6.1 (2023): 456–64 <<https://doi.org/10.31933/unesrev.v6i1.865>>.

¹⁷ Alex Kusmardani and others, 'Faktor-Faktor Penyebab Perceraian dalam Perspektif Hukum Keluarga Antar Madzhab Islam dan Realita Sosial', *JURNAL SYNTAX IMPERATIF: Jurnal Ilmu Sosial dan Pendidikan*, 3.3 (2022): 176 <<https://doi.org/10.36418/syntax-imperatif.v3i3.168>>.

community's attitudes and tendencies in maintaining and implementing religious and cultural values also contribute to the decrease/increase in domestic violence cases.¹⁸

Domestic Violence Prevention Steps

In legal theory, two types of law enforcement efforts can be carried out by law enforcement officers, namely repressive legal efforts and preventive legal efforts. Repressive legal efforts concentrate on eliminating crimes committed through the application and sanctions of criminal law. Meanwhile, preventive legal efforts are actions that indirectly prevent crimes from occurring without using criminal force or the criminal justice system.¹⁹

Law enforcement must focus on four factors: legal certainty (*rechtssicherheit*), legal benefits (*zweckmassigkeit*), legal justice (*gerechtigkeit*), and legal guarantees (*doelmatigkeit*). The law functions as a protector of human interests. Therefore, if a protection has one of the following components, then it can be assumed that legal protection exists:

1. The government protects its citizens.
2. The government provides a guarantee of legal certainty.
3. The government protects the rights of citizens.
4. The government sets sanctions for those who violate it.²⁰

Regarding legal sanctions for perpetrators of domestic violence, Law Number 23 of 2004 details several legal sanctions that can be imposed on perpetrators of domestic violence according to the form of violence they commit.

¹⁸ Cahya Wulandari, 'Legal Philosophy Review: The Participatory Paradigm for Violence Against Women in Central Java', *Yustisia*, 9.1 (2020): 83–97 <<https://doi.org/10.20961/yustisia.v9i1.40667>>.

¹⁹ Tegar Sukma Wahyudi and Toto Kushartono, 'Perlindungan Hukum Terhadap Hak Anak yang Menjadi Korban Perlakuan Tindak Kekerasan Dalam Rumah Tangga Dihubungkan dengan Undang-Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak', *Jurnal Dialektika Hukum*, 2.1 (2020): 57–82 <<https://doi.org/10.36859/jdh.v2i1.510>>.

²⁰ Danny Sandra, Sutopo Sutopo, and Andre Rahmanto, 'Integrated Service Post (PPT) as a Communicator of Domestic Violence Cases (Case Study of Chracter and Attribution PPT as a Communicator of Domestic Violence Cases in Surakarta)', *International Journal of Multicultural and Multireligious Understanding*, 6.6 (2019): 588–99 <<https://doi.org/10.18415/ijmmu.v6i6.1233>>.

a. Sexual Violence

According to Article 8 of the Domestic Violence Law, sexual violence in the context of domestic violence refers to acts of forced sexual intercourse committed against someone who lives within the scope of the household. This act also includes forcing sexual intercourse between one member of the household against another person, either for commercial purposes or other specified purposes. The threat of punishment for perpetrators of sexual violence in the household is as follows:

1. Imprisonment for four years to 15 years or a fine of IDR 12 million to IDR 300 million is imposed on anyone who forces a person within the household to have sexual intercourse with another person for commercial purposes or certain purposes.
2. Imprisonment for five years to 20 years or a fine ranging from IDR 25 million to IDR 500 million is imposed if the sexual violence causes the victim to suffer injuries that cannot be fully healed, experience mental or mental disorders for at least one month or at least one year non-consecutive, cause miscarriage or death of a fetus in the womb, or cause the reproductive organs dysfunction.²¹

b. Physical Violence

According to Article 6 of the Domestic Violence Law, physical violence is an act that causes pain, causes illness, or serious injury to a person. The threat of punishment for perpetrators of physical violence in the household is as follows:

1. A maximum imprisonment of five years or a maximum fine of IDR 15 million is imposed on anyone who commits physical violence in the household.
2. A maximum imprisonment of ten years or a maximum fine of IDR 30 million is imposed if the physical violence causes the victim to fall ill or suffer serious injuries.
3. A maximum imprisonment of 15 years or a maximum fine of IDR 45 million is imposed if the physical violence causes the victim to die.

²¹ Law Number 23 of 2004 Article 13 concerning the Elimination of Domestic Violence.

4. A maximum imprisonment of four months or a maximum fine of IDR 5 million is imposed if the physical violence is committed by a husband against his wife or vice versa, but does not cause illness or obstacles in carrying out work or daily activities.²²

c. Psychological Violence

Article 7 of the Domestic Violence Law defines psychological violence as an act that results in fear, loss of self-confidence, loss of ability to act, feelings of helplessness, or severe psychological suffering in a person. The threat of punishment for perpetrators of psychological violence in the household is as follows:

1. A maximum imprisonment of three years or a maximum fine of IDR 9 million is imposed for every perpetrator who commits an act of psychological violence in the household.
2. A maximum imprisonment of four months or a maximum fine of IDR 3 million is imposed if the psychological violence is committed by a husband against his wife or vice versa, but does not cause illness or hinder the performance of work or daily activities.²³

d. Domestic Neglect

Article 9 of the Domestic Violence Law defines domestic neglect as an act in which a person does not fulfill the obligation to provide life, care, or maintenance to people within the scope of their household, even though by law or agreement they have such responsibility. Neglect also includes the actions of a person who limits or prohibits the person from working properly, either inside or outside the home, so that the victim becomes economically dependent and is under the control of the person. Perpetrators of domestic neglect can be subject to a maximum imprisonment of three years or a maximum fine of IDR 15 million.²⁴

In addition to the criminal sanctions as mentioned above, the idea has now emerged to form a Special Domestic Violence Court in the

²² Law Number 23 of 2004 Article 13 concerning the Elimination of Domestic Violence.

²³ Law Number 23 of 2004 Article 13 concerning the Elimination of Domestic Violence.

²⁴ Law Number 23 of 2004 Article 13 concerning the Elimination of Domestic Violence.

Integrated Criminal Justice System for Handling Domestic Violence Cases (SPPT-PTKKTP) which aims to provide justice, especially to victims, most of whom are women.²⁵

Domestic Violence in the Perspective of Islamic Criminal Law

Islam does not specifically mention or define the term "domestic violence". Islam, however, strictly prohibits any act of violence against anyone and categorizes it as a *jarimah* (crime). According to Wahbah Zuhaili, a crime other than life is any unlawful act against the human body, such as cutting off body parts, injuring, or beating someone, while their soul or life is not disturbed. Abd al-Qadir Audah defines a crime other than life as any act that harms another person that has an impact on their body but does not take their life.²⁶

Regarding violence against wives/partners, this is not explicitly regulated in Islamic law. So, in the theory of Islamic criminal law, domestic violence is included in the category of *jarimah ta'zir*, namely a crime whose punishment is left to the ruler. Although it is classified as *jarimah ta'zir*, it does not mean that Islam has no attitude towards this act. Islam ordered husbands to foster positive relationships with their wives. There are many verses from the Qur'an and hadith that command husbands to treat their wives well (*mu'asyarah bil ma'ruf*).²⁷ This proves that Islam rejects domestic violence. Islamic law considers all types of violence against women, whether occurring inside or outside the home, to be unlawful, especially if the husband beats his wife until she is injured. This of course includes assault on the wife.²⁸

²⁵ Muhammad Ishar Helmi, 'Pengadilan Khusus KDRT "Implementasi Gagasan Sistem Peradilan Pidana Terpadu Penanganan Kasus-Kasus Kekerasan Terhadap Perempuan (SPPT-PKKTTP)"', *Jurnal Cita Hukum*, 2.2 (2014) <<https://doi.org/10.15408/jch.v1i2.1471>>.

²⁶ Didi Sukardi, 'Kajian Kekerasan Rumah Tangga Dalam Perspektif Hukum Islam dan Hukum Positif', *Mahkamah: Jurnal Kajian Hukum Islam*, 9.1 (2015) <<https://doi.org/10.24235/mahkamah.v9i1.287>>.

²⁷ Abdul Aziz, 'Islam dan Kekerasan Dalam Rumah Tangga', *Kordinat: Jurnal Komunikasi Antar Perguruan Tinggi Agama Islam*, 16.1 (2017): 177–96 <<https://doi.org/10.15408/kordinat.v16i1.6460>>.

²⁸ Lukman Santoso and Bustanul Arifin, 'Perlindungan Perempuan Korban Kekerasan Perspektif Hukum Islam', *De Jure: Jurnal Hukum dan Syar'iah*, 8.2 (2017): 113–25 <<https://doi.org/10.18860/j-fsh.v8i2.3732>>.

In his book *al-Tasyrî' al-Jinâ'i al-Islâmy*, Abd al-Qadir Audah explains the meaning of the word *jinâyah*. According to him, linguistically, *jinâyah* is a term for breaking the law. The phrase refers to any action that violates Sharia law, regardless of whether the action involves goods, bodies, property, or lives. The word *jinâyah* is also often used by fuqaha as another term for the word *jarîmah*. The meaning of *jarîmah* is: that Allah threatens to punish someone for violating the prohibition of sharia, while the word *jinâyah* refers to the consequences of the wrong act. "The act of *jarîmah* can be: doing an act that is prohibited by Islamic law, following an order to do a prohibited act, or not doing an act that causes harm to others. Abd al-Qadir Audah emphasized that every act that harms others is *harâm* (unlawful) and can be subject to sanctions.²⁹

In Islam, something that is often associated with domestic violence is the concept of *nusyûz* (disobedience) of a wife towards her husband. The problem of *nusyûz* is indeed stated in the Qur'an, Surah An-Nisa, verse 34 explaining that if a wife is *nusyûz*, after being advised well but it does not work, then the Qur'an allows beating her as a form of education. However, although the Qur'an allows beating, there are limits to this beating. It is forbidden for a husband to beat his wife in any way he wants, including injuring his wife or causing black bruises on her skin, even if the blow is not too strong.³⁰

In a Hadith narrated by Hakim Ibn Mu'awiyah from his father, he once asked: O Messenger of Allah, what are the rights of a wife towards her husband? The Prophet replied: "You feed her when you eat, give her clothes when you dress, and you may not hit her face or badmouth her, and do not leave her except in the house." (HR. Imam Ahmad, Nasa'i, Abu Daud, Ibn Majah, and al-Bukhari divided it again into parts, and it was confirmed by Ibn Hibban and al-Hakim).³¹

²⁹ Sukardi.

³⁰ Moh Zainol Arief, 'Perlindungan Korban Kekerasan Dalam Rumah Tangga Menurut Hukum Islam dan Hukum Positif di Indonesia', in *Prosiding Universitas Wiraraja* (Universitas Wiraraja, 2016) <<https://www.ejournalwiraraja.com/index.php/PRD/article/view/332>>.

³¹ Arief.

Islamic law prohibits the use of violence against women. As stated in QS an-Nisa' [4]:34, beating women because of *nusyûz* should be understood as a means of education and not as a means to hurt or even commit violence. A husband who commits violence against his wife or beats his wife until she is injured is a criminal act because beatings carried out in a situation of *nusyuz* should not cause harm.³²

According to the fuqoha of the Hanâfi and Shâfi'i schools, education is an obligation and a right of the husband, which can be used as long as the wife's safety is guaranteed. These rights can only be used for personal purposes. According to Imam Shâfi'i and Abû Hanîfah, although beating a wife for educational purposes is not subject to Islamic criminal penalties, if the beating exceeds a certain limit, the husband can be held responsible for the act. According to Imam Abû Hanîfah, the reason for education by no means eliminates the right for women to live in prosperity. If the wife's soul or body is harmed due to education, then the act is no longer education but abuse or murder. So, from the perspective of Islamic criminal law, physical violence committed by a husband against his wife is a criminal act prohibited by sharia (*jarîmah*) because it can cause injury and endanger the safety of women.³³

Ibn Kathir when interpreting Surah an-Nisa: 35 explains that if there is a dispute or argument between a man and a woman, the judge or arbitrator should try to bring the two parties together by knowing the root of the problem. And help them find an agreed solution together, and prevent anyone from making mistakes. If the dispute still occurs and the judge needs help, then the judge may appoint a third party, one man and one woman, who can be relied on to examine the problem and find a way out that benefits both parties. In this case, Allah SWT says in this verse: "If the two *Hakam* intend to reconcile, surely Allah will grant *Taufiq* (guidance) to the husband and wife."³⁴

³² Abdul Haq Syawqi, 'Hukum Islam dan Kekerasan Dalam Rumah Tangga', *De Jure: Jurnal Hukum dan Syar'iah*, 7.1 (2015): 68–77 <<https://doi.org/10.18860/j-fsh.v7i1.3509>>.

³³ Arief.

³⁴ Ahmad Syairafi Al Ayyubi and Erniwati Erniwati, 'Restoratif Justice Pada Kasus Kekerasan Dalam Rumah Tangga Menurut Perspektif Hukum Pidana Islam', *Ta'zir: Jurnal Hukum Pidana*, 7.1 (2023): 66–79 <<https://doi.org/10.19109/tazir.v7i1.18384>>.

A believer who always does good deeds is promised to always receive Allah's pleasure, including peace like Allah SWT Himself. It is stated in Surah an-Nisa: 114, "There is no good in most of their whispers, except the whispers of those who order (people) to give charity, or do good deeds, or make peace between people. Will give him a great reward."

Referring to the explanation of the problem of domestic violence from the perspective of Islamic criminal law above, it is clear that acts of violence in any form that harm the soul and body of the partner do not have legality from the Qur'an, hadith, or the opinions of the fuqoha, in fact such acts are prohibited and can be subject to legal sanctions.³⁵

Settlement Patterns of Domestic Violence Cases in the Bandung Police and Religious Court Areas

Before describing the ins and outs of resolving domestic violence cases in the Bandung police and Religious Court, it would be a good idea for the author to present the development of the number of domestic violence cases handled by the two institutions. This is important considering that the development of cases in the two institutions differs due to the different competencies possessed by each institution. The development of the number of cases in question can be seen in the following tables:

Table 1. Domestic Violence Handled and Settled by the Bandung Police PPA Unit Until October 2023

No	Year	Number of Cases	Completion
1	2020	47 Cases	22
2	2021	31 Cases	26
3	2022	44 Cases	31
4	2023	45 Cases	21
	Total	177 Cases	100

Source: Bandung Police PPA Unit

³⁵ Al Ayyubi and Erniwati.

Of the number of domestic violence cases listed in the table above, the most common forms of violence are physical and sexual violence. As for psychological violence and neglect, there are almost no reports. As for the causes of domestic violence, most are due to economic factors and third parties.³⁶

On the other hand, an overview of the development of the number of divorce cases motivated by domestic violence cases at the Bandung Religious Court can be understood from the following table:

Table 2. The Development of Divorce Cases Related to Domestic Violence at Bandung Religious Court³⁷

No	Month	Causes of Divorce due to Domestic Violence
1	August	7
2	September	2
3	October	2
	Total	9

Source: Bandung Religious Court

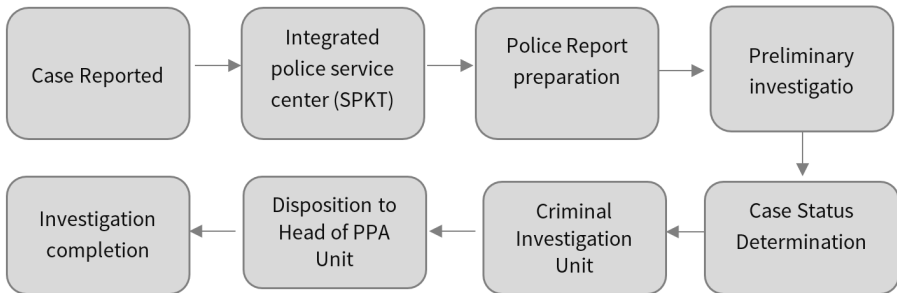
The following description will present an overview of the case-handling mechanism in each of these institutions.

a. Poltabes Bandung:

The Police Agency has a standard procedure (Protap) which is a standard guideline in handling a case. Specifically for domestic violence cases, the flow of case handling can be understood through the following diagram:

³⁶ Cecep Suhendra, Author’s interview with interviewee of the PPA unit (Protection of Women and Children) of the Bandung Police Criminal Investigation Unit (IPDA Cecep Suhendra, S.H. as Head of PPA Sub-Nit), 2023.

³⁷ M Adli Hakim H, Author’s interview with interviewee from the Bandung Religious Court (M. Adli Hakim H, S.H. as Judicial Case Analyst), 2023.

Diagram. 1. Procedure/Stages of Case Handling at Poltabes Bandung

The diagram above can be explained as follows:

First, the victim or his/her attorney comes to the police station and reports the domestic violence case that he/she experienced. The police, under the integrated police service center unit (SPKT), record the report and prepare a police report. The police will then investigate the case to obtain evidence and witnesses. If initial evidence has been obtained, the next step is for the police to conduct an investigation. At this stage, investigators are allowed to arrest and detain the perpetrator of domestic violence if the supporting evidence is sufficient. During this process, the perpetrator is allowed to be accompanied by a lawyer. The presence of a lawyer is very important to protect the legal rights of the suspect during the case process.³⁸

After the investigation process is complete, the police will make an official report and will proceed to the next stage. Here there are two options, namely: carrying out Restorative Justice (for cases with light legal sanctions) or referring the case to the prosecutor's office (for cases with moderate or heavy legal sanctions). Restorative Justice is carried out through a mediation forum that can be attended directly by the perpetrator and victim or represented by their respective attorneys. This process will involve the prosecutor's office and investigators. So that later the right solution can be found for the case.³⁹

³⁸ Suhendra.

³⁹ Suhendra.

Mediation in criminal cases is also known as "*Strafbemiddeling*" in Dutch, "*Der Außergerichtliche Tatausgleich*" (abbreviated ATA) in German, or "*De Mediasi Penale*" in French. Because the main purpose of penal mediation is to bring together the perpetrator and victim, this forum is often also referred to as "Victim-Offender Mediation" (VOM) or *Täter-Opfer-Ausgleich* (TOA).⁴⁰ Criminal mediation is a better-known approach in the criminal justice system to resolve domestic violence situations.⁴¹ The purpose of mediation is not to judge each party's mistakes but to reunite the parties and repair the family relationship that was previously broken so that it returns to the way it was before the crime occurred.⁴²

The process of resolving cases through this mediation forum is generally carried out based on considerations of the level/qualification of the case or because of the request of the victim. Indeed, in many cases, the main goal of victims reporting violence to the police is for the perpetrator to realize his mistake (repent) and not repeat the act (deterred). In addition, the victim still wants to keep his household intact, especially if the perpetrator is the main breadwinner of the family and no one can support them if he is imprisoned. To help the Reporter and the Reporter sit together to resolve the conflict that arises between the two parties, the police can involve religious leaders, community leaders, and other parties who are considered competent in resolving the conflict.

Furthermore, if the mediation process is successful and both parties can be reconciled, the victim may withdraw their lawsuit. With the withdrawal of the complaint report from the victim, the case is stopped and the perpetrator is then released from detention.⁴³ In contrast, if

⁴⁰ Sarah Azkia and Dian Andriasari, 'Studi Kasus KDRT di Polrestabes Bandung Ditinjau dari Aspek Hukum Pidana dan Kriminologi', *Jurnal Riset Ilmu Hukum*, 2023: 55–62 <<https://doi.org/10.29313/jrih.v3i1.2139>>.

⁴¹ Samsiar Arief and Andi Rahmah, 'Implementasi Mediasi Penal dalam Penyelesaian Kasus Kekerasan Dalam Rumah Tangga (KDRT)', *PETITUM*, 6.1 April (2018): 8–21 <<https://doi.org/10.36090/jh.v6i1>>.

⁴² Syarifuddin.

⁴³ Suhendra.

the mediation process facilitated by the police fails, or if the threat of punishment for the domestic violence case is at a medium or severe level, the police will continue the case process to the next stage, namely transferring it to the local prosecutor's office. In this transfer process, the police will hand over the suspect along with the case files and evidence to the prosecutor's office so that the prosecutor can begin the examination process to be submitted to the court.⁴⁴

During the examination process, the victims are informed of their rights, including the police's obligation to protect them temporarily. For at least seven days, the police can work with other stakeholders, such as volunteers, social workers, and health experts, to help protect or care for the victim until he or she feels completely recovered. In addition, a special service room (RPK) is also provided for victims, which is intended so that victims can communicate with officers to facilitate the case examination process. This is evidence of police officers' concern for victims of domestic violence.⁴⁵

In addition to taking preventive measures, the police also take preemptive measures to stop crimes from occurring. This is done through socialization and legal counseling activities and collaborating with psychologists, psychiatrists, and doctors to provide counseling outside the legal system.⁴⁶ The goal is to instill values of goodness in everyone so that even though there is an opportunity to break the law or commit a crime, nothing unlawful will happen as he has no desire to do so.⁴⁷

b. Bandung Religious Court

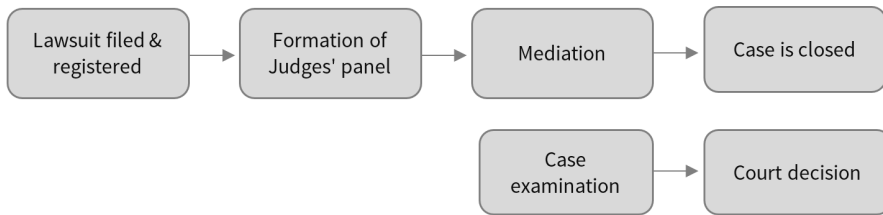
In contrast to the pattern of case handling at the Bandung Police, at the Bandung Religious Court, the case handling process takes place as follows:

⁴⁴ Suhendra.

⁴⁵ Suhendra.

⁴⁶ Suhendra.

⁴⁷ Laely Wulandari, 'Kebijakan Penanganan Kekerasan Dalam Rumah Tangga Melalui Mediasi Penal', *LAW REFORM*, 4.1 (2010): 1 <<https://doi.org/10.14710/lr.v4i1.312>>.

Diagram 2. Stages of Handling Cases at the Bandung Religious Court

The diagram above explains that the process of handling a divorce lawsuit based on domestic violence at the Bandung Religious Court begins with the victim/plaintiff registering their lawsuit with the Court through the clerk's office. The clerk will then examine and perfect the minutes of the lawsuit and then forward it to the Head of the Religious Court. The Head of the Religious Court will then form a panel of judges to examine the case and determine the trial schedule. On the first day of the trial, the judge will offer the parties to reconcile through a mediation forum. If the parties agree and the mediation is successful, then the case examination is stopped. Conversely, if the mediation forum fails and the parties refuse to reconcile, the trial continues with the case examination.⁴⁸

At the case examination stage, all evidence and witnesses are submitted to the courtroom to be the basis for the judge to make a decision. After the case examination process is deemed sufficient, the judge will decide whether to accept or reject the lawsuit and then close the trial.⁴⁹

In the Religious Court, the form of legal protection given to the plaintiff - who is also a victim of domestic violence - is not physical, but through granting a divorce petition to the judge, a petition regarding joint property, child support, custody, or a petition regarding other civil rights permitted by law, including a petition to seek legal assistance from an advocate.⁵⁰ However, the plaintiff/victim cannot ask the judge to try the

⁴⁸ Hakim.

⁴⁹ Hakim.

⁵⁰ Agil Fatkhurohmah, Muhamad Yunus, and Amrullah Hayatudin, 'Perlindungan Hukum Bagi Perempuan Korban KDRT Pada Perkara Cerai Gugat', *Jurnal Riset Hukum Keluarga Islam*, 3.1 (2023): 52–55 <<https://doi.org/10.29313/jrhki.vi.2154>>.

domestic violence case they experienced because it falls into the criminal domain which is outside the authority of the Religious Court. In other words, if the victim's goal is only to remove the perpetrator of domestic violence from his life, then the Religious Court is the right place for that. However, if he wants to criminalize or imprison the perpetrator, he must report it to the Police or District Court.⁵¹

In the Religious Court, there are no repressive or preventive efforts to overcome domestic violence because it is not the domain of the Religious Court. The principle of justice applied is passive/waiting. In the process of examining the case, the judge in the Religious Court does not make the case of domestic violence into the case material, but rather it is only one of the factors that causes divorce. In addition, domestic violence cases are only revealed in the verdict and are not published because the principle of civil justice is private, unlike criminal justice which can be public. All that can be done by the Religious Court is to mediate the parties so that the previously damaged family ties can be repaired.⁵²

Inhibiting Factors of Law Enforcement in Religious Courts & Bandung City Police

In every dispute resolution institution, in both the civil and criminal realms, certain obstacles cannot be controlled. However, efforts need to be made to resolve these obstacles to minimize the rampant cases of domestic violence in society.

In police institutions, the main obstacle faced, especially in the PPA unit, is the lack of adequate infrastructure and human resources. The lack of infrastructure and the number of police officers in the PPA unit is experienced in almost all police stations in the country. Understandably, the number of female investigators among police officers is currently only 4%; a small number considering the many cases involving women, both as suspects of crimes and as victims of rape and domestic violence.⁵³

⁵¹ Hakim.

⁵² Hakim.

⁵³ Suhendra.

Another obstacle that makes it difficult for officers is the lack of witnesses. Witnesses are difficult to obtain because they are in the family realm, while the one who determines the witnesses is the victim themselves. In addition, sometimes the visum is no longer accurate because the incident happened a long time ago. Finally, because the basic requirements and elements that must be present for the sake of investigation are not met, the victim is forced to withdraw his complaint.⁵⁴ In addition, sometimes the victim suffers a large loss, so it must be resolved or the perpetrator must be tried. Situations like this make it difficult to apply the restorative principle.⁵⁵

In the Religious Court, the toughest challenge encountered in handling divorce cases based on domestic violence is that most plaintiffs, because of considerations of the interests of the children or the continuity of the household, give up and accept the offer of reconciliation. This situation does, on the one hand, provide benefits for both parties, but on the other hand, it does not provide a deterrent effect on the perpetrator. Apart from all that, weak family resilience and lack of legal awareness in the community are obstacles that are difficult to overcome.⁵⁶

Conclusion

Based on the descriptions in the previous section, it can be concluded that both Criminal Law (KUHP) and Islamic criminal law hold the view that domestic violence is part of a criminal act whose perpetrator can be subject to criminal sanctions. However, Islamic law does not determine what kind of punishment should be imposed on the perpetrator; It leaves it to the authorities' decision. Regarding the mechanism for handling domestic violence cases in the Religious Court and Bandung City Police, these two institutions apply different mechanisms, the Bandung Religious Court only focuses on the civil side, while the Bandung City Police focuses on the criminal side. This happens because each institution has

⁵⁴ Suhendra.

⁵⁵ Suhendra; Anggraeni and Ardianto.

⁵⁶ Suhendra.

different competencies. In addition, this study also recommends that the idea of establishing a Special Domestic Violence Court be realized to bring justice to victims, most of whom are women.

Author's Contributions

Usep Saepullah, played a pivotal role in formulating the research questions, designing the overall framework of the study, and conducting the literature review to establish a theoretical basis. He also contributed to writing the introduction, methodology sections, conclusions, and recommendations.

Eva Nur Hopipah, conducted the data collection process, employing qualitative methods to gather comprehensive data from various sources, including interviews and surveys. She also undertook the analysis of the data to interpret the findings effectively.

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