



## HUSBAND'S BEATING OF WIFE: OBJEKTIF REVIEW OF ISLAMIC LAW AND LEGISLATION IN INDONESIA

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### Abstract

*The beating of a husband to wife often reflects as an act of domestic violence. The phenomenon that once went viral in Indonesia between a celebrity couple, Lesti Kejora and Rizky Billar, is a form of beating that has become violent. In fact, this unnatural method is contrary to the intentions of the law, both Islamic law and Indonesian law. Therefore, this study is aimed at exploring this subject through phenomenological, psychological, hermeneutic, and contextual approaches, with regard to the husband's beating of the wife. It turns out that in verse 34 of surah al-Nisa', the husband's beating of the wife, who was initially suspected of being a trigger for domestic violence, became the engine of the flying of hidden love and intimacy. This can be achieved if the three stages of coaching in this verse are carried out consistently. Of course, with this hermeneutical interpretation, the intentions of Islamic law and Indonesian law are in the same direction, namely for the creation of a happy family, sakīnah, mawaddah, and rahmah.*

**Keywords:** *Beatings, Violence, Law, Maqāshid al-Syarī'ah.*

### 1. INTRODUCTION

The main purpose of the presence of Islamic law (*maqāshid al-syarī'ah, the objective of Islamic Law*) is for the realization of the goodness and troubles of human life (*jalb al-mashālih*), and the avoidance of various vices and mafsadat (*dar' al-mafāsīd*) upon the surface of this earth. It is this orientative principle of *maqāshidiyyah* that is the epistemological basis in understanding the substance of the law provided by Islam. Although the substance of Islamic law is at first glance understood as if it is contrary to justice, particularistic, as well as partial, especially in<sup>1</sup> genderistic studies,<sup>2</sup> namun masalah

<sup>1</sup> Ilham Tohari and Moh Anas Kholish, "Maqasid Syariah as a Conceptual Foothold in the Renewal of Indonesian Islamic Family Law," *Law Arena* 13, no. 2 (2020): 314–28.

<sup>2</sup> Napisah Napisah and Syahabuddin Syahabuddin, "A Study of the Meaning of Dharabah for Nusyuz's Wife in Gendar Perspective," *Court : Journal of Islamic Law Studies* 4, no. 1 (June 25, 2019): 13– 25, <https://doi.org/10.24235/mahkamah.v4i1.3436>. In this study, the author asserts that nusyuz is not for reasons of husband's disobedience to wife, but more than that, which is a deviation from the rules of piety, self-preservation, and honor. This explanation contradicts KHI Articles 83 and 84 which state that *nusyuz* is the wife's disobedience to the husband.

*khilāfiyah* ini harus dikembalikan pada maksud universalnya, yakni *maqāshid al-syarī'ah* tadi.<sup>3</sup>

As in the case of beating a husband against a wife which had gone viral on social media, because the main character from celebrity circles, namely between Rizky Billar and Lesti Kejora, was quite a drain on public attention. Some consider this action as domestic violence (KDRT), especially for gender observers, condemning the act of beating in the household, so that any form of beating is considered as violence that must be punished as a criminal under Law Number 23 of 2004 concerning Domestic Violence.<sup>4</sup>

Others do the opposite, especially from islamic radicalism-fundamentalism, the act of a husband hitting his wife is normal in Islamic family law, because the beating a husband takes against his wife includes an act that obtains his legal legality in the Quran based on sura al-Nisa', 4, verse 34. So that the husband becomes as if he is tyrannical towards his wife who gets the legal ability to beat if his wife does not fulfill her desires and desires. Thus the relationship of husband and wife becomes like the relationship of the master with his slave, not a reciprocal relationship full of alienation (*mubādalah*) between the subjects who are fully human, not one as an object for the other. Of course, this kind of relationship is very far from what<sup>5</sup> *maqāshid al-syarī'ah* expects, which is a family life that is closely related to *sakānah*, *mawaddah*, and *rahmah*.<sup>6</sup>

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<sup>3</sup> Tohari and Kholish, "Maqasid Syariah Sebagai Pijakan Konseptual Dalam Pembaruan Hukum Keluarga Islam Indonesia."

<sup>4</sup> Napisah and Syahabuddin, "A Study of the Meaning of Dharabah for Nusyuz's Wife in Gendar's Perspective."

<sup>5</sup> Fajriatun Nisa Islami, "The Impact of Radicalism on Today's Women," *FOCUS 2*, no. 2 (2021): 97–107, <https://doi.org/10.26593/focus.v2i2.5404>.

<sup>6</sup> Habib Wakidatul Ihtiar, "Reading Maqashid Shari'ah In Marriage Guidance Program," *Ahkam: Journal of Islamic Law* 8, no. 2 (November 19, 2020): 233–58, <https://doi.org/10.21274/ahkam.2020.8.2.233-258>.



Of course Islamic law must stand between these two extreme poles, between liberalism-particularistic and radicalism-fundamentalistic. Islamic law in no way negates the law of beating husbands against their wives, based on sura al-Nisa', 4, verse 34, but also does not provide legal freedom to commit physical violence as Rizky Billar did against his wife, Lesti Kejora. Therefore, the crux of the problem here is the matter of the beating that the husband did to his wife. From this comes several research questions: Why is the husband allowed to beat his wife in Islamic law? What is the purpose of enacting the law of beating a husband against his wife in Islamic law? What is the correct manner of beating that Islamic law desires? And how is this act of beating when connected with the legal system in Indonesia? Therefore, this study seeks to analyze whether the beating of husbands against wives can still be enforced in today's industrial age 4.0, and what if this matter is viewed objectively and moderately through the perspective of <sup>7</sup>*maqāshid al-syarī'ah* (the objective of Islamic law), namely by answering some of the research questions.

## 2. IMPLEMENTATION METHOD

The research method is phenomenological, hermeneutic, psychological, and contextual, because indeed the subject of this study is related to a case that has gone viral between Rizky Billar and Lesti Kejora. This research is aimed at explaining the meaning of Islamic law behind the ability of husbands to beat their wives and their applicability in this day and age through the perspective of *maqāshid al-syarī'ah*.

## 3. RESULTS AND DISCUSSION

### 1. The Phenomenon of Husband Beating Wife

Pemukulan suami terhadap istri telah menjadi fenomena umum hampir di setiap keluarga, dan ironinya kemudian membentuk kekerasan dalam rumah tangga (KDRT). Tentu saja pemukulan dan kekerasan merupakan dua istilah yang sangat berbeda. Secara

<sup>7</sup> Tri Wahyudi Ramdhan, "Dimensions of Islamic Moderation," *Al-Insiyroh: Journal of Islamic Studies* 2, no. 2 (October 12, 2018): 29–48, <https://doi.org/10.35309/alinsiyroh.v2i2.3320>.

etimologis, kekerasan diartikan sebagai sifat keras, kegiatan kekerasan yang mengandung paksaan; perbuatan yang menyebabkan cedera atau kerusakan fisik, yang bisa berujung pada death in someone who is a victim of violence. This sense is then relegated to its terminological meaning, and of course this word violence must be attributed to other words for the sake of the need for the meaning of the term. As in this study, the intended violence is domestic violence, or abbreviated as domestic violence. That is, acts of violence here occur in the domestic territory of the family, in which there is a primary family factor, namely the husband, wife, and children of the relationship between the two; There are also other family factors that are grand in nature, large families, such as grandpa, grandma, uncle, aunt, grandson, ponakan, and so on.<sup>89</sup>

Domestic violence, especially in the primary family, is often committed by a husband to his wife, because the term violence in the frame of domestic violence is raised because of the husband's violence against his wife. That is, domestic violence is an act of beating a husband against a wife but in its extreme, outrageous, and unnatural form.<sup>10</sup>

One of the phenomena that has gone viral on Indonesian social media and television recently, which has attracted a lot of attention from various circles, is Rizky Billar's beating of his wife, Lesti Kejora. Who would have thought, this celebrity couple who was originally considered an ideal couple, as seen together the two of them on their YouTube channel, but not long ago there was a case of domestic violence that was completely unexpected. Violence is not only a blow, but was also a physical slam against Lesti Kejora,

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<sup>8</sup> Bambang Rudi Harnoko, "Behind Violence Against Women," *Muwazah: Journal of Gender Studies* 2, no. 1 (2010), <https://doi.org/10.28918/muwazah.v2i1.16>.

<sup>9</sup> Nita Yuniarti, "Efforts to Eliminate Domestic Violence (KDRT) through Law," *Insights: Journal of Education and Training Center for Religious Training Jakarta* 1, no. 2 (2020): 60–71, <https://doi.org/10.53800/wawasan.v1i1.43>.

<sup>10</sup> Nita Yuniarti, "Efforts to Eliminate Domestic Violence (KDRT) through Law," *Insights: Journal of Education and Training Center for Religious Training Jakarta* 1, no. 2 (2020): 60–71, <https://doi.org/10.53800/wawasan.v1i1.43>.



which required him to be treated intensely in hospital. While Rizky Billar has to face off with the law. However

ini the end of the story, Lesti Kejora gives her forgiveness to her husband on the grounds that it is for the sake of family integrity, and the husband becomes free from the law.<sup>11</sup>

After all, the celebrity family was only a small picture of the phenomenon of husband beating wives or domestic violence among families in Indonesia. Because there is a common assumption in society where if family problems, including problems of violence, should be kept in the news, just known by the family, because this is a family disgrace. Therefore, many wives who are victims of husband violence prefer to be silent and keep it secret, one of the reasons is for the sake of maintaining the integrity of the household.<sup>12</sup>

Lesti herself, in her confessions in various news stories, never reported the violence she experienced from her husband to the police. Lesti prefers to keep himself quiet from the law, one of the main reasons for the sake of the integrity of his family. It turned out that lesti could not bear it became a victim of her husband's violence, so she was the one who reported this domestic violence case to the authorities, so that the news went viral throughout Indonesia. But the most important thing to be explained here, the beating of the husband against the wife, or in the form of his extrite activity, namely domestic violence, is a phenomenon in almost all families. If every family is willing to be honest, almost all of them have experienced this, whether as subjects or as objects, whether as perpetrators or as

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<sup>11</sup> Compass Cyber Media, "Letter of Peace Shown, Rizky Billar and Lesti Forgive Each Other and Want to Build a Household Again Page all," KOMPAS.com, October 13, 2022, <https://www.kompas.com/hype/read/2022/10/14/064019066/surat-damai-diperlihatkan-rizky-billar-and-lesti-mutual-forgiving-and-wanting>.

<sup>12</sup> Finta Vibiola and Afdal Afdal, "Analysis of Understanding Family Function in Victims of Domestic Violence (KDRT) In Terms of Socioeconomic Status and Cultural Background," *Journal of Education and Counseling (JPDK)* 4, no. 4 (August 30, 2022): 6143– 54, <https://doi.org/10.31004/jpdk.v4i4.6461>.

victims. This domestic violence case is for some <sup>13</sup> people are deliberately punished in the judiciary, some silence it, some leak out the information because some are leaked it. After all, domestic violence is a common phenomenon for every family. Because indeed, despite the influence of texts or traditions with regard to the superiority of men, indeed physiologically men tend to be stronger than women. These advantages should be a very important consideration when discussing gender. Because life in this world is not always as soft and smooth as expectations, such as robbery, murder, and rape, and in this case of course physical strength becomes very important to its existence. This destiny naturally became undisputed.<sup>1415</sup>

In addition to the physiological perspective, the patriarchal potential seen from the analogous and deductive way of thinking is also much stronger for men than women. That's why in Islam, the issue of leadership (*al- qiwāmah*), both religious leadership, such as prophetic and guardianship, as well as in the prayers of pilgrims and families, Islam relies on men. This paradigm is then used as the basis of arguments for social, political, and legal leadership. The position of the text (quran and sunnah) here is actually only to reinforce the natural talents of each gender, not to control them. Because it is not actually a text that regulates gender, but a text that seats the role of gender according to its original potential.<sup>16</sup>

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<sup>13</sup> Detikcom team, "Revealed from Letter of Agreement, Lesti's Father Who Reported Rizky Billar," detikhot, accessed November 20, 2022, <https://hot.detik.com/celeb/d-6353215/terungkap-dari-letter-agreement-father-lesti-yang-report-rizky-billar>.

<sup>14</sup> Vibiola and Afdal, "Analysis of Understanding Family Function in Victims of Domestic Violence (KDRT) In Terms of Socioeconomic Status and Cultural Background."

<sup>15</sup> Syaefudin Achmad, "Building Gender-Minded Education," *Yinyang: Journal of Islamic Studies of Gender And Children* 14, no. 1 (July 24, 2019): 70–91, <https://doi.org/10.24090/yinyang.v14i1.2843>.

<sup>16</sup> Wakhid Hasyim, "Male or Female: Family Leader?," *Equalita: Journal of Gender and Child Studies* 3, no. 1 (June 1, 2021), <https://doi.org/10.24235/equalita.v3i1.8631>.



It could be made a kind of imaginary image that in a society that develops without being attached to any texts and traditions. The act of beating the husband against the wife or domestic violence, will still occur in it when faced with problems heavy kinship in the household. Why is that? Because basically naturally men are much stronger physically than women. Physical perspective, this is the thought base of the husband's beating of the wife or domestic violence (domestic violence). Therefore, the demand for gender justice in the sense of obtaining the right to equality in everything is of course impossible, especially in the household. Therefore, it would be wise for the Quran to make men (husbands) the leaders of the family, because of their deductive physical strength and reason. And the woman (wife) is made a representative, because of the power and way of thinking that is inductive. With each of these advantages, gender justice is embodied in the form of reciprocal relationships full of *interdependence (mubādalāh)* between subjects who are fully human, not one as an object for the other.<sup>17</sup>

## 1. Islamic Law and Its Main Purpose

The law is indeed considered terrible by most people. Not a few people avoid it and think it is better to be tormented than to deal with the law. Dealing with the law is like falling down the stairs. Punishing, that means bringing in twice as much as before, even more. Such a negative perspective on the law has absolutely no logical basis for argumentation, because the real purpose of the law is for good, security, and peace. Therefore, in Islamic law there is a special study of the purpose or purpose of the law, whose Arabic term is called *maqāshid al-syarī'ah*, or in English it is called *the objective of Islamic law*.

It is agreed that the objective perspective of Islamic law, from classical to contemporary scholars, has two main objectives, namely: avoiding ugliness or corruption

<sup>17</sup> Islamic, "The Impact of Radicalism on Today's Women."



(*dar' al-mafāsīd*) and bringing good or benefit (*jalb al-mashālih*). The general intent of Islamic law is then derived from the five *maqāshid* substances which are practical in nature, namely maintaining religion (*hifzh al-dīn*), nurturing the soul (*hifzh al-nafs*), nurture reason (*hifzh al-'aql*), preserve property (*hifzh al-māl*), and nurture offspring (*hifzh al-nasl*).<sup>18</sup> Everyone certainly wants a happy and harmonious life, both personal life, family, and society. But it is not uncommon for the chosen path of life to threaten his happiness, what is thought to be the right one becomes a tool to confirm mistakes. This is due to human passions that tend to ugliness (*ammārah bi al-sū'*). Like corruption to obtain wealth, then thinking with the wealth he will obtain through the proceeds of this corruption, later he will clean it up with flowing alms (<sup>19</sup>*shadaqah jāriyah*), such as building mosques, establishing pesantren, and so on, so that he gets his righteousness and is free from his sins. But he was unaware of the negative impact on his family's life which could be drug entanglement, juvenile delinquency, psychological suffering, and so on, as a result of consuming illicit goods, which thus undermines the five principles of maintenance.

Likewise, sometimes a husband (father) commits acts of violence for the sake of violence to his family with good intentions in the name of family education, but because of the blindness in the way it is organized, it negatively affects the psyche of the person who is the victim, namely his own family, so that it affects the five principles of maintenance, especially psychiatric, sometimes for a very long period of time. Because psychologically, extreme beatings and domestic violence are the fruits of past beatings and violence that carry over into the present. The roots and causes of domestic violence are actually in

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<sup>18</sup> Ahmad Suganda, "The Urgency And Level Of Maqashid Shari'ah In The Benefit Of Society," *At-Tadbir Journal : Legal Media And Education* 30, no. 1 (January 31, 2020): 1– 16, <https://doi.org/10.52030/attadbir.v30i01.28>.

<sup>19</sup> Shahrial Dedi, "Nikah Misyar: An Analysis of Maqashid al-Shari'ah," *Al Hurriyah : Journal of Islamic Law* 3, no. 1 (June 22, 2018): 41–52, <https://doi.org/10.30983/alhurriyah.v3i1.554>.





education in the family environment. It becomes very important to obey and obey the rules and policies that Islam offers in the implementation of legal life in upon the surface of this earth is logically, moderately, justly, and wisely. So that the main purpose of the law remains straight and in line with the ideals, intentions, or objectives of the law itself, without being influenced by negative indulgences of lust. Therefore, it is not appropriate for religious people to be suspicious of religion, humans who are said to be punitive creatures to be suspicious of the law. Thus the law must be enforced and administered logically, justly, moderately, and with wisdom, so that even the intention of the law can be fulfilled, namely the diminishing of violence, evil, and <sup>20</sup>*mafsadat*, and the increasing flood of goodness, tenderness, and maslahat in the life of mankind on the surface of this earth. The achievement of the purpose of the law, this means the presence of syugawi life on earth which is *sakīnah*, *mawaddah*, and *rahmah*, both individual, familial, and societal.

## 1. Review of Indonesian Laws

In the substance of Indonesian legislation, namely the Marriage Law Number 1 of 1974, in Chapter I paragraph 1, it is explained, that marriage is a physical and mental bond between husband and wife for the formation of a happy and eternal family based on theological principles. In the Compilation of Islamic Law (KHI), Chapter II Articles 2 and 3, it is explained, that marriage is a contract that is carried out because of the motivation of worship, with the aim of forming a<sup>21</sup> *sakīnah*, *mawaddah*, and *rahmah* family. In Law Number 23 of 2004 concerning the Elimination of Domestic Violence, namely in Article 2 paragraph 1, that an act of domestic violence is any act, especially against a woman, against the wife in this case, which by doing so results in physical, sexual, and

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<sup>20</sup> Ihtiar, "Reading Maqashid Shari'ah In The Marital Guidance Program."

<sup>21</sup> Hamsah Hudafi, "Formation of the Sakinah Mawaddah Warahmah Family According to Law Number 1 of 1974 and Compilation of Islamic Law," *Al Hurriyah : Journal of Islamic Law* 5, no. 2 (December 31, 2020): 172–81, <https://doi.org/10.30983/alhurriyah.v5i2.3647>.

psychological pain, both with <sup>22</sup>Ways of neglect, coercion, deprivation of liberty, and other unlawful acts in the domestic territory of the household.<sup>23</sup>

Actually, juridically, the substance of the law in Indonesia is the same as that desired by Islamic law, namely the obtaining of common goodness and benefit, both within the family and society. As in family life, both Islamic law and Indonesian law, both expect the implementation of a harmonious and happy home life based on theological, worship, and humanitarian principles, in the frame of *sakīnah*, *mawaddah*, and *rahmah*. In addition, as well as Islamic law, Indonesian law also strongly labels acts of violence in any form, which have the potential to damage domestic peace, both physicalist, psychic, and so on, which in the Islamic legal system is considered contrary to the purpose of the law (*maqāshid al-syarī'ah*), because the act of violence can damage the five systems of preservation, both religion, soul, reason, property, and descent.<sup>24</sup>

### 1. Legal Significance of Husband's Beating of Wife

In the Islamic legal system, the verse that becomes the counterversion is considered to be the trigger for beatings, and, even, domestic violence is the verse *nusyūz* (the wife's denial of the husband), the verse about the wife's disobedience to the husband. The verse is <sup>25</sup>in A n-Nisa', 4, 34. This verse asserts that the role of a husband is *al- qiwāmah* or leadership in the household. A role that a husband cannot refuse at all, having been

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<sup>22</sup> Hamsah Hudafi, "Formation of the Sakinah Mawaddah Warahmah Family According to Law Number 1 of 1974 and Compilation of Islamic Law," *Al Hurriyah : Journal of Islamic Law* 5, no. 2 (December 31, 2020): 172–81, <https://doi.org/10.30983/alhurriyah.v5i2.3647>.

<sup>23</sup> Elias Zadrach Leasa, "Aspek Legal Spirit Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga," *SASI* 24, no. 2 (February 28, 2019): 168–78, <https://doi.org/10.47268/sasi.v24i2.131>.

<sup>24</sup> Tohari and Kholish, "Maqasid Sharia as a Conceptual Foothold in the Renewal of Indonesian Islamic Family Law."

<sup>25</sup> Ika Ristian, "Nusyuz Istri Articles In The Compilation Of Islamic Law And Domestic Violence," *Al-Hakim Journal: Student Scientific Journal, Sharia Studies, Law And Philanthropy* 2, no. 2 (September 28, 2020): 55–62, <https://doi.org/10.22515/alhakim.v2i2.2787>.



commanded by God to occupy this position. In the leadership of the household, if things go according to plan, of course domestic life will proceed according to the purpose of marriage *maslahat*,<sup>26</sup> *sakīnah*, *mawaddah*, and *rahmah*. It's just that, when there is a problem, in this case *nusyūz* or the wife's denial of the husband, then only here is the leadership of the husband takes an important role in removing the thorns that threaten the family's troubles. In this verse is the word<sup>27</sup> *idhribūhunna*, which is a verb of command (*fi'l al-amr*), which commands the husband to beat his wife, as a way to deal with *nusyūz*. This is the verse that reaps enormous contraversion among linguists. Gender activists, who are mostly women, reject this verse because it is considered a trigger for the ease with which husbands beat their wives, and even domestic violence.<sup>28</sup>

Some interpretive scholars, too, have objected to the existence of this *idhribūhunna* (hit them!) sentence, thus giving the interpretation not as it is. Classical interpreters, such as Atha' ibn Abi Rahah (d. 114H/732 AD), for example, give the conclusion of the law of *makruh*, under *haram*, even though editorially the verse allows it. This conclusion is based on the *sunnah*, because the Prophet Muhammad SAW never hit his wife or servants, even He satirized the irritable husbands and even hit their wives. A similar opinion was also expressed by Indonesian interpretive scholars, such as Hamka who stated that the ability to beat this when "is very necessary". Only good people will not hit his wife. The same interpretation as Depag's Tafsir, which is "(if necessary) hit them!." Unlike Quraish Shihab, beatings are still relevant and applicable today to certain cases, gross disciplinary violations, such as in the military, in children's education, including in the household. Only

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<sup>26</sup> Labibah Labibah, "The Concept of Nusyuz Women In Tafsir Al-Azhar And al-Misbah," *NIHAIYYAT: Journal of Islamic Interdisciplinary Studies* 1, no. 3 (March 23, 2022): 267.

<sup>27</sup> Labibah Labibah, "The Concept of Nusyuz Women In Tafsir Al-Azhar And al-Misbah," *NIHAIYYAT: Journal of Islamic Interdisciplinary Studies* 1, no. 3 (March 23, 2022): 267.

<sup>28</sup> Napisah and Syahabuddin, "A Study of the Meaning of Dharabah for Nusyuz's Wife in Gendar's Perspective."

those that<sup>29</sup><sup>30</sup><sup>31</sup> It is worth emphasizing here is the nature of the beating, that is, not to injure, injure, and be very painful.<sup>32</sup>

Indeed, in practice law must be sequential, gradual, and there are levels gradually (*tadrījī*). It is this principle of *tadrījī* that often goes unnoticed by most people in applying the law. As in the formation of khamar monastery, there are stages, not all at once. At first, don't set up prayers when you're drunk. This means that outside of prayer, it is still okay to drink khamar and get drunk. Khamar is still not forbidden. The second stage, the learning that in the khamar there is good, but the bad is much greater. Even at this stage, people are still allowed to drink khamar and get drunk. Only then was the third stage affirmed by his monasticism, that in the khamar there was unclean and the deed of sheikh, so that it could no longer be done, and the khamar, that is, drinking it, was punished as an illegitimate deed.<sup>33</sup>

Likewise, if you look at the verse about responding to *nusyūz*, there are also stages, not all at once. In practice, the husband should not directly hit the wife, as it is not illegitimate for khamar at the beginning of the stage. Therefore, in the application of the law, there is always a preliminary stage that is lighter in nature. The preliminary stage for addressing this<sup>34</sup> *nusyūz* issue is to give good advice, or positive sentences, including verbal outrage, aimed at changing the wife's behavior that is considered unkind, contrary to the

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<sup>29</sup>Misbahul Huda, "The Jurisprudence of Husbands' Beatings Against Wives: A Study of Faqihuddin Abdul Kodir's Views," *Al-Ahwal: Journal of Islamic Family Law* 13, no. 2 (December 10, 2020): 163–81, <https://doi.org/10.14421/ahwal.2020.13206>.

<sup>30</sup>Hamka, *Tafsir Al-Azhar*, vol. 5 (Jakarta: Yayasan Nurul Islam, 1965), 64.

<sup>31</sup> Compiler, *Official Translation of the Ministry of Religion of the Republic of Indonesia* (Jakarta: Pena Pundi Aksara, 2002), 85.

<sup>32</sup> Labibah, "Konsep Wanita Nusyuz Dalam Tafsir Al-Azhar Dan al-Misbah."

<sup>33</sup>Afidah Wahyuni, "Tafsir Ahkam Methodology: Some Approaches And Schools In Knowing Maqashid al-Shari'ah (Comparative Studies)," *Al-Mizan : Journal of Islamic Law and Economics* 2, no. 2 (September 20, 2018): 41–73, <https://doi.org/10.33511/almizan.v2n2.41-73>.

<sup>34</sup> Labibah, "The Concept of Nusyuz Women In Tafsir Al-Azhar And Al-Misbah."



law, and causes harm to the family. Why is this done by the husband? The key word is at the beginning of verse 34 of sura al-Nisa', which is "the husband is the leader over his wife". Since there is a condition of leadership (<sup>3536</sup>*al-qiwāmah*), then as Consequently, there must be leadership action against his wife, children, as well as other family members who are in under the auspices of his leadership, including his aides, adopted children, and ~~das~~ Therefore, how to deal with a *nusyūz* wife, the initial stage is through verbal, exhortations, innuendo, reprimands, anger with reasonable words, not words full of disobedience and filth (*rafats*), this is a form of a husband's leadership responsibility towards his wife. In this preliminary stage, there is dialogue, communication, exchange of thoughts and opinions, giving each other logical and rational arguments, discussing together to solve problems together. This was an early attempt to change the wife's attitude, an early stage to address the issue of her wife's *nusyūz*.

By and large, for human beings whose common sense, logic flows well, it will be easier to dialogue solving problems and conflicts. The dialog opens. Communicate with each other. There is an attitude of giving arguments, and there is an attitude of listening. So that in the end the subject matter can be understood and understood, so that understanding arises, and the problem is resolved, there is nothing else to dispute and debate. This is a man who is civilized, knowledgeable, and has wisdom. Simply by oral dialogue, even problems can be solved.<sup>37</sup>

The problem is that sometimes people tend to follow their low passions, are not open, like to wear masks, cover what should be open, and open what should be covered. So

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<sup>35</sup> Labibah, "The Concept of Nusyuz Women In Tafsir Al-Azhar And Al-Misbah."

<sup>36</sup> Wardah Nuronyah, "The Concept of Qiwamah and the Phenomenon of Women Heads of Families," *Equalita: Journal of Gender and Child Studies* 4, no. 1 (June 30, 2022): 113–35, <https://doi.org/10.24235/equalita.v4i1.10900>.

<sup>37</sup> Mughniatul Ilma, "Contextualization of the Nusyuz Concept in Indonesia," *Tribakti: Journal of Islamic Thought* 30, no. 1 (January 31, 2019): 47–74, <https://doi.org/10.33367/tribakti.v30i1.661>.

that the space of dialogue becomes analogous, communicating but more can be called a debate full of ego and ego. Husband, as a leader, his good counsel was not listened to, instead turning to refute, blame, and condescend. Of course the function Good leadership, ideal family management, will never be realized if you always dispute each other and put forward egos.<sup>38</sup>

Therefore, if words, dialogue, discussion, are unable to change the wife's *nusyūz* attitude towards the husband, the existence of the wife is still troubling the husband and family, then the next stage of coaching that must be taken is to separate the bed, not sleep together as befits a married couple, and silence his wife or do not talk to her in a reasonable degree. Splitting the bed, this is a hint of a temporary disconnection of the sexological biological relationship between married couples. With this biological disconnection, it seems to be going through a divorce, a semi-divorce. Husband and wife move singly no longer as a couple (<sup>39</sup>*al-zauj*). Of course it will feel very strange and full of psychological pressure, where they are still inside one house, but for a while they are out of the world of couples as husband and wife. Whereas the core motivation of marriage is this sexological relationship (*al-jimā'*), with which there will be a harmonious and intimate relationship between the two, and with this feeling they can together move forward to the goal of marriage that is *sakīnah*, *mawaddah*, and *rahmah*.

Therefore, in order to restore marital awareness, the attitude offered by the Quran to respond to *nusyūz* is the core motive of marriage itself, namely by the separation of the bed, which is also followed by silence, not neglect. Then, how long has this attitude of separation and silence of the wife be carried out? Some scholars, mainly from the

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<sup>38</sup> Mughniatul Ilma, "Contextualization of the Nusyuz Concept in Indonesia," *Tribakti: Journal of Islamic Thought* 30, no. 1 (January 31, 2019): 47–74, <https://doi.org/10.33367/tribakti.v30i1.661>.

<sup>39</sup> Iffah Muzammil, *Fiqh Munakahat: The Law of Marriage In Islam* (Tangerang: Tira Smart, 2019), 158.



Shafi'iyah circles, have a time of three days, based on the hadith of the Prophet SAW: "It is not lawful for a Muslim to silence his brother for more than three days," (HR. Bukhari, from Anas bin Malik).<sup>40</sup> However, based on the experience of Baginda Nabi SAW, he once carried out this punishment against his wife for one month. Sourced from Ibn Abbas, he said: "Thou shalt not associate with him (wife) on thy mattress, for the Prophet SAW has<sup>41</sup> leaving his wife, not caring for her, for a month," (HR. Muttafaq 'Alaih). Of course, this behavior is not without reason, because this kind of attitude, splitting the bed, and also quieting it down, will have a very strong psychological impact. Words may not have a strong effect yet, but with this second attitude, their influence will become very strong. This is the opportunity for the wife to change her behavior and leave *nusyūz* towards her husband.

According to the author, contextually, the reason is based on the hadith of the Prophet that Shafi'iyah used earlier is not quite right, namely splitting the bed and keeping the wife quiet for only three days. Because the redaction of this hadith is a brotherhood of fellow Muslims, not in its more close and close relations, as is the relationship of husband and wife. Moreover, the context of this discussion is the coaching of a leader, that is, a husband, towards his *nusyūz* wife. Therefore, the attitude taken by the Prophet SAW towards his wife, based on the hadith of Ibn Abbas earlier, is more than 3 days, that is, 1 month.

In prophetic history, there has also been how the Prophet Muhammad SAW, as a great leader, gave punishment to people who were considered very disobedient, namely the companions who avoided fighting in the Tabuk War. There were three of them, namely Ka'b bin Malik, Hilal bin Umayyad, and Mararah bin Rabi'. Upon arriving from Tabuk,

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<sup>40</sup>Muhammad ibn Ismail Bukhari, *Shahih Al-Bukhari*, vol. 8 (Egyptian: Sulthaniyyah, 1311H), 19.

<sup>41</sup>Wahbah Zuhaili, *Al-Fiqh al-Islami Wa Adillatuh*, 2nd ed., vol. 9 (Damascus: Dar al-Fikr, 1985), 6855.



these three companions reported and apologized to Baginda Nabi SAW, because they did not participate in the war, even though they were still able to do so. As a punishment, He silenced the three companions, did not associate with them, and ordered the other companions to do the same, and this situation lasted for 40 days. This means that for 40 days He SAW and all friends did not talk and get along with the three friends, and this was part of the leadership attitude and efforts to nurture the friends. And this kind of punishment really It became a very severe torment for the three companions, and how happy they were when the sentence was lifted after 40 days.<sup>42</sup>

If this story can be an analogy to the second attitude in responding to *nusyūz*, who separates the bed, does not associate with the wife, and also silences her, then this attitude can be done for 40 days. This avoidance, avoidance, or separation of beds, is a great leadership attitude that is able to have a very big impact on the psychological psyche, and also provides the widest possible opportunity for the wife to introspect inward and do self-study. Therefore, in this second stage, when practiced truly, it will be able to change the attitude of the *nusyūz* wife to obey, paralyze her ego and admit mistakes, thus returning to the established rule of law, returning to a reasonable and ideal attitude as a wife, for the sake of *sakīnah*, *mawaddah*, and *rahmah* togetherness and kinship.

It's just that there are some people who are really hard-hearted, don't want peace at all. He prefers to harbor anger rather than express friendliness. He prefers to dispute rather than reconcile. Good advice and advice is not listened to. Split the bed and be silenced, thus increasingly rampant his *nusyūz*. In fact, this separation of beds and silence is a semi-divorce. This kind of selfish wife, when viewed psychologically, no longer desires for her

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<sup>42</sup> Febrian Eka Ramadhan, "The Story of Three Companions of the Prophet Who The Prophet And All Muslims Did Not Talk To," Islami[dot]co, October 23, 2020, <https://islami.co/kisah-3-sahabat-nabi-yang-not-invited-talk-prophet-and-all-muslims/>.



husband, and it can be said, she is better off divorcing than with her husband. In a husband and wife relationship, if you get to this second stage, there is still no change, it means that this is a very serious problem that will threaten hubungan mereka ke arah yang lebih mengerikan lagi, yaitu terputusnya perkawinan, atau perceraian.

But Islamic law strongly dislikes divorce. Something that is lawful yet deeply hated by God is divorce. Therefore, here the husband is still the one who still loves his wife, is still given one more opportunity to perform acts of leadership, and in order to maintain the integrity of the household, is avoided from the breakup of their marriage, that is, to beat his wife. Hitting the wife, this is the last resort that Islamic law offers to straighten out a<sup>43</sup> *nusyūz* wife, after the previous two ways have been fruitless.

But the ability to beat here is not to vent resentment and manifest heartache towards his wife, so that it is expressed that blows are full of violence, extreme, and unnatural. Hitting here should contain three important motivations of leadership (*al-qiwāmah*), namely (1) to provide education and coaching, (2) to restore the consciousness of the wife as his wife, and (3) to return the *nusyūz* to the path of legal obedience.

Then, how to hit the right one? It really depends on his motivation, because as in the hadith, all deeds depend on his intentions, his motivations. Intention or motivation, this is the epistemological basis in the act of beating the husband against his wife. Of course, there will be different fruits of the beating, between the motivations full of anger and resentment, with the motivations of the leadership of the husband who is still affectionate and the love for his wife who hopes that his wife will return to love her and change her direction from *nusyūz* to obedience to the rules of Allah and His Messenger.

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<sup>43</sup>Muhamad Mustahal, "The Urgency of Hakam in the Preservation of Marriage According to the View of Tafsir Scholars," *An-Nawa: Journal of Islamic Studies* 2, no. 2 (2020): 19–33, <https://doi.org/10.37758/annawa.v2i2.117>.

It should also be noted, that spanking is part of three stages of coaching: (1) verbal communion, (2) bed separation and incarceration, and (3) beating. This means that the beating is the second continuation, and the second continuation of the first. This process or stage of coaching is a very intelligent psychological coaching stage offered by the Quran that will be able to increase intimacy and intimacy between married couples.

It's just that practically a lot of people are wrong in applying it. Because when he took the third action: hitting his wife, he went back to the beginning. He begins hitting his wife with words, advice, or verbal communication, only then does he hit his wife, even along with the words when he beats her. This means that he repeats back to the initial stage and goes directly to the final stage. This kind of practice is actually not in accordance with the guidelines, and it is very natural that hitting becomes a crime and becomes domestic violence, because it starts with a debate of words first.

It is quite interesting indeed what the Quran offers with regard to the construction of this *nusyūz*. It is conceivable that when a person is being silenced and then shocked by a blow, it will result in a huge shock and question mark, and this situation will awaken his deepest inner consciousness that has been hidden, that is, with regard to his purpose of choosing her husband as her life partner. This is one of the intentions of the blow, which is to restore her original consciousness that she is still the wife of the husband she once loved so much. In psychology this theory is called *clicking*, or hitting, in quranic terms, which serves to shock or awaken the deepest consciousness. With the flight of that deepest consciousness, anger instantly vanished into hospitality, a fiery grudge instantly extinguished into peace.<sup>44</sup>

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<sup>44</sup>Priatno Martokoesoemo, *Spiritual Thinking*, 1st ed. (Bandung: Mizania, 2007), 140.



At this point, of course, you can imagine the way or what kind of beating a husband will do to his wife. Because of his motivation of love and affection for his wife, and this is done after the stages of bed separation and incarceration, then of course the beating here becomes like a tool of consciousness to restore consciousness their pairing as husband and wife. This means that the beating is a way to re-knit intimacy and intimacy deeper between married couples. That's why in this way of beating is strictly forbidden by Baginda Nabi SAW hitting the face, because this method will not arouse love and intimacy, instead it will only arouse the anger of the wife who will burn even more, because she feels demeaned and abused.<sup>45</sup>

Based on the explanation above, it can be understood, either through the perspective of Islamic law or legislation in Indonesia, the beating of a husband against a wife that leads to violence, which has an impact on her physique and soul, does not get the basis of her truth. It is not a beating that departs from the motivations of anger and resentment desired by law, especially Islamic law, but a beating that can awaken the deepest consciousness, so as to fly a deeper sense of love, affection, intimacy, and intimacy between married couples, so that with this psychological wealth they can more maximally achieve the goal of a happy marriage, *sakīnah*, *mawaddah*, and *rahmah*.

#### 4. CONCLUSION

Based on the above, it can be concluded the following:

1. The husband's beating of the wife is carried out because of the reflection or expression of a husband's responsibility to his wife, because in the husband's shoulders there is a burden of leadership (*al-qiwāmah*) towards his wife and family.
2. The purpose of the beating of the wife is to provide education and guidance, restore the consciousness of the wife as his wife, and return *the nusyūz* to the path of legal obedience.

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<sup>45</sup>Saibatul Hamdi and Ahya Ulumiddin, "Responding to Nusyuz in the Family: An Endeavor to Create a Harmonious Family (Comparative Study of the Opinions of Imam Shafi'i and Hanafi)," *Al- Mudarris (Scientific Journal of Islamic Education)* 2, no. 1 (May 1, 2019): 73–90, <https://doi.org/10.23971/mdr.v2i1.1396>.

3. There are three stages of coaching before the beating is taken, namely (a) verbal communication, dissection, or dialogue; (b) separate beds and bed separation for a period of time, whether 3 days, 1 month, or 40 days; and (c) beatings. When this method should be done consistently and gradually. With this stage, the motivation for beating that arises is not the motivation of resentment and anger, but the motivation of love and affection.
1. Through this hermeneutic and psychological interpretation, it can be understood that there is substantially no conflict between the Islamic legal system and the legal system in Indonesia, both in the Marriage Law, the KHI, and also the Untand-Law on the Elimination of Domestic Violence.

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