

VIOLENCE AGAINST WOMEN: BETWEEN NORMATIVENESS RELIGIOUS AND JURIDICAL INTERPRETATION OF MUBADALAH PERSPECTIVE

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Abstract: The juridical legitimacy of men's position as leaders who have authority in the interpretation of the verses of the Qur'an has implications for violence against women in the household. Biased interpretations of religious texts and legal regulations that do not clearly regulate the protection of women victims of violence are typical problems in acts of domestic violence. This research focuses on documentation studies based on text studies. This method is used to explore data, facts and theories that make a belief true. Normative legal studies are carried out by focusing on the study of text interpretation, statutory regulations and Islamic law to find comparisons. This article aims to review the interpretation of verses from the Koran which have been very masculine by using the concept of mubindah. Through this article, the concept of mubjadi will change the horizon of thinking towards unequal men and women to be balanced, so that violence and injustice against women can be prevented.

Keywords: *Violence against women, religious interpretations, mubadalah*

Introduction

The violence against women is one manifestation of gender inequality that occurs due to stereotypes, subordination, double burdens and marginalization. Gender injustice is a reflection of structured injustice constructed by social, cultural and even religious systems that lead to violations of human rights. In principle, Islam, especially in matters of marriage, gives an honorable position to women. The husband's obligation to give a dowry, prepare a place to live and support, and treat his wife decently, is a reflection that Islam really respects the position of the wife. However, in some classical fiqh literature, there are still gaps that have the potential to give rise to discriminatory behavior towards women. Likewise, from a juridical perspective, in principle there are various instruments in the form of statutory regulations as an effort to protect women from acts of violence, whether physical, psychological, sexual or economic, namely; UU no. 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT). The presence of the PKDRT Law is a reflection of the social demands of society and a recognition that violence in the domestic sphere is a real phenomenon and therefore needs to be prevented. (Ridwan: 2006: 5).

Most people understand that Islamic law places household matters as a juridical engagement framed by the spirit of religious spirituality. Marriage is a legal instrument for the formation of a family in which each family member is bound by their respective rights and obligations as regulated in religious texts. The husband is considered the head of the family, so he has authority as a leader that cannot be taken over by other members. Through this article, we will examine how violence against women is based on juridical conceptions in Indonesia and religious interpretations. Is it true that the normative nature of religious interpretation legitimizes violence against women? This will be studied using the mubadalah approach, which is a concept of gender equality using the principles of mutuality and relationship, namely having the same relationship or relationship to gain benefits. (Adib, M. A., & Mujahidah, N:

2021). The mubjadi theory explains and straightens out unequal gender issues. The focus of this theory is on the view of the mutual relationship between a husband and wife. (Basid, A., & Jazila, S: 2023)

Literature Review

Based on Article 1 of the anti-violence against women declaration, it is stated that violence against women is also termed gender violence, namely: "any action based on differences in gender that results in or is likely to result in physical, psychological and sexual misery or suffering for women, including threats, coercion, restrictions. freedom both in public and in private life." The form can be physical, sexual, psychological or economic violence. Like; rape, pornography, prostitution, forced sterilization of birth control (enforced sterilization), touching women's body parts without their consent (molestation), sexual harassment, trafficking, and so on. Violence against women occurs in the process of interaction, which results in an imbalance in bargaining positions in role status or position. The source of the emergence of violence is related to patriarchal cultural aspects, dominative and exploitative structural aspects due to the unequal bargaining position of men and women, so that the actual physical and mental-psychological realization is below the potential realization.

Women are very vulnerable to gender-based violence due to their weak legal and social position, economic and emotional dependence. Women are also still considered sexual objects. Women themselves even perceive this condition as something natural, a perception that is strengthened by religious teachings and local traditions. (Nursyahbani Katca Sungkana: 2020). Violence is an attack or invasion of a person's physical or psychological mental integrity. Violence arises because of the existence of authority where groups of people in subordinate positions will always be victims of violence. (Eti Nurhayati: 2002)

The portrait of patriarchal culture that is inherent in society is detrimental to the existence of women who are victims of violence. Victims of violence are often blamed for the actions committed by someone else (in this case, a man). Wives as victims of domestic violence are often seen as the trigger for acts of violence committed by their husbands. (Gadis Arivia, 2020).

The Religious doctrines, including Islam, have so far been considered to have contributed to perpetuating injustice against women which is implemented in marginalization, subordination, stereotypes, double burdens and even giving rise to violence against women. Islamic law is considered to have a tendency to favor men and is discriminatory against women. Issues that are often brought to the surface are regarding leadership, testimony, guardianship, polygamy, nusyuz, inheritance and others. Feminists consider the fields that are part of the study of Islamic law to be very gender biased. (Asni: 2016)

Method

The method used in this article is normative juridical by searching literature through books, articles and media, reinforced with a statutory approach and using the principle of mubjadi which was initiated by KH Faqihuddin Abdul Kodir. Through qualitative analysis, it is described how violence against women occurs due to erroneous assumptions about the interpretation of religious texts by explaining several verses of the Koran and hadith which are often used as juridical legitimacy regarding the husband's position in the family by society.

Result and Discussion

1. Violence Against Women from a Juridical Perspective

As an implementation of constitutional rights, the 1945 Constitution of the Republic of Indonesia regulates the protection of citizens from all acts of discrimination. Indonesia has also ratified several international legal instruments relating to the protection of women, such as; International Covenant on Civil and Political Rights (ICCPR) with Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights) which confirms that all people are equal before the law and that laws and regulations prohibit discrimination and guarantee equal protection for all people from discrimination based on any reason, including sex or gender. (Nurhilmayah: 2019)

Several laws and regulations in Indonesia have been regulated relating to the protection of women to create a social order that respects human rights and is egalitarian, especially protection from discriminatory treatment and violent practices. Specifically, gender-based violence that occurs within the household is regulated in Law no. 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT). Based on the UU PKDRT, it is explained that what is meant by domestic violence is any act against someone, especially women, which results in physical, sexual, psychological misery or suffering and/or acts of coercion or unlawful deprivation of liberty within the household. Based on this formulation, four forms of violence are regulated in UU PKDRT, including; physical, psychological, sexual violence and economic neglect. In principle, UU PKDRT aims to prevent all forms of domestic violence, protect victims, take action against perpetrators and maintain a harmonious and prosperous household. However, legal culture sometimes does not support the existence of these laws. There are still many people who think that domestic violence is an internal problem and a family disgrace. In fact, quite a few people think that a husband in the household has the right to beat his wife as he pleases. The legal system, which includes legal substance, legal culture and legal structure, is not yet fully in favor of women, including wrong assumptions about religious teachings, so that women experience violence in almost all areas of life.

2. Reinterpretation of religious interpretations that give rise to violence against Women's Perspective Mubadalah

Based on religious arguments, society often states that it is a woman's nature to serve her husband's sexual needs, so that rape in the household is not known because it is not in accordance with religious values. (Nathaniel, 2020). The normative provisions for the leadership authority of men as husbands in the family are often linked to Surah An Nisa verse 34. Religious interpretations still play an important role in legitimizing domination over women. The Qur'an seems to place women as subordinate to men. Mufasir's ways of thinking and knowledge are different, the interpretation methods they use are also different, so this leads to differences in interpretation and understanding of the verses of the Qur'an. (Asni: 2016)

In principle, the Qur'an recognizes the existence of differences between men and women, but these differences are not discrimination that benefits one party and harms the other. These differences are intended to support the main mission of the Qur'an, namely the creation of harmonious relationships based on compassion (*mawaddah wa rahmah*) between individuals. This is the forerunner to the realization of an ideal social and state order under the auspices of God (*baldatun thayyibatun wa rabbun ghafur*). This can all be realized if there is a pattern of balance and harmony between men and women. (Siti Musdah Mulia: 2014)

Tawhid eliminates all barriers of discrimination and subordination. The belief that only Allah is worthy of deity and that no one or anything is equal to Allah, necessitates the equality and equality of all humans before Allah, both as servants of Allah and as caliphs. Humans, both men and women, carry out the same duty of monotheism, namely worshiping only Allah SWT. On

the basis of justice and equality, all humans are brotherly in monotheism. The basic vision of monotheism is strengthened by the mission of the Prophet Muhammad SAW to perfect human morals. Respect each other, help, cherish, love, open the way for goodness, provide benefits and not hurt yourself or others. (Faquhuddin Abdul Qodir: 2022).

This principle of mutuality to provide goodness and avoid evil is termed mubindah, namely the perspective of mutuality in the relationship between two parties. Thus, it is rooted in social monotheism which emphasizes equality, justice, compassion and respect for humanity. With this perspective, both parties in a relationship are required to be friendly and humane, not to discredit, not to look down on and not to be hegemonic and not to commit violence and all forms of injustice. (Faquhuddin Abdul Kodir: 2020).

Nomatively, the Qur'an as a reference for the principles of the Islamic ummah explains that the position of men and women is the same. Both were created from one nafs (living entity), where one has no superiority over the other. In fact, the Qur'an does not explicitly explain that Eve was created from the rib of the Prophet Adam so her position and status was lower. On that basis, the principles of the Qur'an regarding men and women are the same, where the wife's rights are recognized as equal to the husband's rights. Understanding different interpretations of the creation of men and women based on Surah An Nisa verse 1:

"O people, fear your Lord, who created you from one self (nafis), and from him Allah created his partner and from both of them Allah gave birth to many men and women....."

According to the majority of interpretive scholars, the nafs referred to in Surah An Nisa' above is Adam and his partner is his wife, Siti Hawa. This view has then given rise to a negative view of women by stating that women are part of men. What is meant by some of you are descendants of others is just as men come from men and women. So, likewise, women come from men and women. (Munir, M. M., & Furziah, F: 2022). Both are humans, there is no advantage to one over the other when it comes to assessing their faith and deeds. (Dozan, W., Wadi, H., & Jaswadi, J. (2021).

In principle, the ulama agree that among the contents of the Qur'an is liberation and raising the dignity of women from adversity and a very low position during the period of ignorance. (Al Yasa'Abubakar. 2016). Islam glorifies, protects, and gives women rights that were not enjoyed before. Islam has essentially eliminated discrimination between men and women, Islam was born with a conception of human relations based on justice in the position of men and women. Apart from decision making, women in Islam also have economic rights, namely; to own assets and not be interfered with by the husband. Apart from that, there is a husband's obligation to pay the dowry to his wife and it cannot be taken back by the husband.

Thus, according to Mansur Fakih, there is nothing in Islamic teachings that impoverishes, discriminates, degrades, let alone perpetuates violence against women, because these actions are contrary to the principles of justice and benefit in Islam. (Mansur Fakih: 2001). Allah recognizes women's social and economic rights and commands them to call for goodness and forbid evil, just like men. Allah says in Surah at-Taubah verse 71, meaning;

"And those who believe, men and women, some of them (are) helpers for others. They enjoin (do) what is good, prevent what is evil, perform prayers, pay zakat and they obey Allah and His Messenger. They will be given mercy by Allah; Verily Allah is All-Mighty, All-Wise."

In essence, Islam is a religion that upholds egalitarian principles, namely equality between humans, both men and women and between nations, tribes and descendants, as stated in Surah al Hujurat verse 13, meaning:

"O mankind, indeed, we created you from a man and a woman and made you into nations and tribes so that you may know each other. Indeed, the noblest among you in the sight of Allah is the most pious among you."

This verse explains the equality between men and women both in terms of worship (spiritual dimension) and in social activities (professional career matters). This verse completely erodes the view which states that between the two there are differences that marginalize one of them. This equality includes various things, for example in the field of worship. Whoever is diligent in worship will receive more rewards regardless of gender. The difference then arises due to the quality of the value of devotion and piety to Allah SWT. This verse also emphasizes that the main mission of the Qur'an is to liberate humans from various forms of discrimination and oppression, including discrimination regarding sex, skin color, ethnicity and other primordial ties. Women are equal to men, except in some matters which are clearly excluded or differentiated in the Qur'an.

Even though theoretically the Koran contains the principle of equality between men and women, it turns out that in implementation settings these principles are often neglected. The differences between men and women occur because they biologically have their own natures. (Jonari Hanafi, Endang Jamahsari. 2019). Differences in nature between women and men do not cause gender differences between them. Biological differences between men and women are used as the basis for weakening women's existence in every way. The position of women in subordination and marginalization is a reason for men to exploit and abuse women physically, psychologically, sexually and economically. This condition is often exploited by men to discriminate against women or marginalize women, thereby not involving women in strategic roles. (Atikah Rahmi: 2020)

The Qur'an and Hadith are sometimes also translated contradictory regarding the relationship between women and men. Meanwhile, in several other verses, there is actually a position of women who are subordinate to men, such as the verse about male leadership as mentioned in Surah An Nisa verse 32. Surah An Nisa verse 32 is used as a basis for interpreters of classical jurisprudence books to states that men are superior to women, because women are inferior and subordinate creatures, including verses relating to inheritance and women's testimony. Surah an Nisa verse 32 above suggests differences, and that each has its own privileges. Although, this verse does not explain what the privileges and differences are, it is certain that these differences result in the main functions that each of them must carry out. But the difference is not in the level of intelligence and thinking ability of the two types (men and women).

Apart from that, Surah An Nisa verse 34 reads; "Men are leaders over women", this verse is used as juridical legitimacy regarding the husband's position in the family as the leader who has the authority to lead and the wife as one of the people being led. This verse provides justification for husbands to take certain steps when a wife is disobedient to her husband, one of which is by beating the wife as an educational effort.

Based on the principle of mubindah, women and men are both equal subjects. The issue of protection must not be used to hinder women, but to ensure that they obtain protection as well as the basic rights mentioned in the text. Referring to Surah An Nisa verse 34, if it is changed then women and men can become subjects. In the mubjadi interpretation, Surah An Nisa verse 34 does not emphasize men's leadership over women, or gender-based support responsibilities. Because this meaning does not cause conflict and is not in accordance with Islamic principles which give responsibility based on capacity and ability. A person is given the burden of responsibility not just based on gender, but because of the abilities they have. Tafsir mubjadi emphasizes that Surah An Nisa verse 34 expresses the demand for those who have virtue (fadhl) and wealth (nafaqah) to be responsible for supporting those who are unable and do not have wealth. (Faqihuddin Abdul Kodir: 2021).

Furthermore, Ali Engineer is of the opinion that Suran An Nisa verse 34 should be understood as a description of the state of social structure and norms of society at that time, and not a teaching norm. This verse explains that at that time men were the managers of the household and it is not a statement that men must dominate and lead. In Islamic history, the situation of women changed, as awareness of women's rights grew. The word *qawwam* has always been understood differently from time to time. In the past, based on this verse, women were considered lower than men and the implication was like in feudal times that women had to serve men. (Ali engineer: 2008)

Meanwhile, the ulama interpret *nusyuz* as the wife's disobedience or opposition to her husband. *Nusyuz* is disobedience, resistance, turning away, getting angry and leaving the house without the husband's permission. In fact, in the books of Uqud al-Lujjain, Hasyiyah Al-Badjuri and others, a wife's less cheerful face in front of her husband is also considered a form of *nusyuz* (Thobieb Al-Asyhar: 2003). In contrast to the opinion of Faqihuddin Abdul Kodir (2022), using a *mubjadi* perspective, *nusyuz* can occur on the part of the husband or wife, one of them or both of them can do *nusyuz*. So *nusyuz* is not only defined as the wife's disobedience, but any action that will destroy the relationship or marriage bond, both from the husband and the wife.

Through Surah An Nisa verse 34, Islam is assessed by various groups, especially feminist circles, as a religion that legalizes acts of violence against wives (women). Islam is considered to tolerate husbands' abusive treatment of their wives for reasons of *nusyuz*. In fact, the word "hit" taught in this verse is only contextual, not a normative teaching that applies in every era. The Prophet Muhammad SAW, after the revelation of this verse, even issued many sayings prohibiting beating women. Meanwhile, many verses in the Qur'an explain that Allah SWT. encouraging a respectful attitude in marriage. Violence against wives is actually contrary to the concept of *mu'asyarah bi al ma'ruf*. Allah SWT, the Most Just, will not allow unfair treatment and violence against women by their fellow creatures.

Conclusion

One of the sources of violence against women is a biased understanding of religious interpretations. The unequal power relationship between husband and wife is a trigger for violence so that the *mubadalah* perspective needs to be implemented in life. The principle of mutuality which prioritizes equality, justice and *ma'ruf* to create benefits for the entire ummah. The *mubadalah* perspective regarding the relationship between men and women is a source of inspiration in interpreting texts and reality with the assumption that men and women are equal subjects whose relationship between them is cooperation, mutuality, and mutual help.

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