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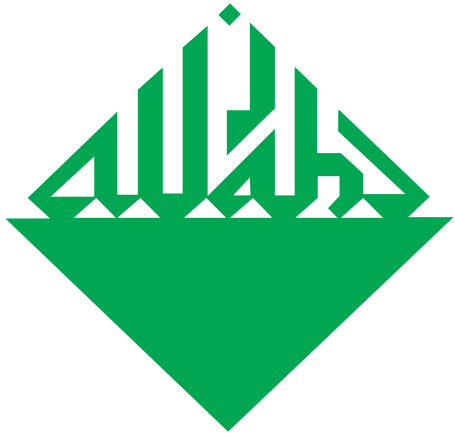

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Protecting Women from Domestic Violence: Islam, Family Law, and the State in Indonesia

Alfitri

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Alfitri

Protecting Women from Domestic Violence: Islam, Family Law, and the State in Indonesia

Abstract: *Despite the enactment of a specific law on domestic violence, the elimination of violence in the household is still an elusive target in Indonesia. For example, according to the National Commission on Anti Violence Against Women, a large number of Muslim divorces in the Religious Courts have involved domestic violence. This article discusses the opportunities and challenges for eliminating domestic violence in Indonesian Muslim society. Employing both normative and socio-legal analysis, it finds that the state is unable to resolve the existing conflict between the requirements of the Law – which oblige the state to amend conflicting legislation – and the provisions of both civil and Islamic marriage laws, which create the potential for violence against women in the household. These include gender role stereotypes, the fuzziness of the obedience concept* (nushūz) *and linking maintenance to a wife's obedience, and the ambiguity of marriage validity. This necessitates the reformation of Indonesian marriage laws.*

Keywords: Violence against Women, Latent Ignorance, Discriminative Marriage Law, *Nushūz*, Unregistered Marriage.

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Abstrak: *Meskipun telah diberlakukannya undang-undang khusus tentang kekerasan dalam rumah tangga (UU PDKRT), penghapusan kekerasan dalam rumah tangga masih menjadi target yang sulit dicapai di Indonesia. Sejumlah besar perceraian Muslim di Pengadilan Agama, misalnya, mengandung unsur kekerasan dalam rumah tangga menurut Komisi Nasional Anti Kekerasan terhadap Perempuan. Artikel ini bertujuan untuk membahas peluang dan tantangan untuk menghapus kekerasan dalam rumah tangga di Masyarakat Muslim Indonesia. Dengan menggunakan analisis normatif dan socio-legal, ditemukan bahwa negara tidak dapat menyelesaikan konflik yang ada antara tuntutan UU PDKRT - yang mewajibkan negara untuk mengubah hukum yang bertentangan - dan ketentuan undang-undang perkawinan nasional dan Islam yang membuka peluang terjadinya kekerasan terhadap perempuan dalam rumah tangga. Termasuk di dalamnya adalah stereotip pembagian peran gender, ketidakjelasan konsep kepatuhan* (nushūz) *dan mengaitkan pemberian nafkah dengan kepatuhan istri, dan ambiguitas validitas pernikahan. Kondisi ini mengharuskan reformasi hukum perkawinan Indonesia harus segera dilakukan.*

Kata kunci: Kekerasan terhadap Perempuan, Ketidaktahuan Laten, Hukum Perkawinan Diskriminatif, *Nushūz*, Perkawinan Tidak Terdaftar.

ملخص: على الرغم من تطبيق قانون خاص بشأن العنف المنزلي، فلا يزال القضاء على العنف في الأسرة هدفا بعيد المنال في إندونيسيا. على سبيل المثال، وفقا للجنة الوطنية لمكافحة العنف ضد المرأة ، فإن عددا كبيرا من حالات الطلاق بين المسلمين في المحاكم الدينية تضمنت العنف المنزلي. يناقش هذا المقال الفرص والتحديات من أجل القضاء على العنف المنزلي في المجتمع الإندونيسي المسلم باستخدام التحليل المعياري والاجتماعي – القانوني، ويجد أن الدولة غير قادرة على حل الصراع القائم بين متطلبات القانون – التي تلزم الدولة بتعديل التشريعات المتضاربة – وأحكام كل من قانوني الزواج المدني والإسلامي–، التي تخلق احتمالية العنف ضد المرأة في الأسرة. وتشمل هذه الصور: النمطية في تقسيم الأدوار بين الجنسين، وغموض مفهوم الطاعة (النشوز) وربط النفقة بطاعة الزوجة، وغموض صحة الزواج. وهذا يستلزم إصلاح قانون الزواج الإندونيسي.

الكلمات المفتاحية: العنف ضد المرأة، الجهل الكامن، قانون الزواج التمييزي، نشوز، زواج غير مسجل.

Many have assumed that the home is the safest place for women from violence. In reality, however, women are often hurt at home, physically or psychologically, in their roles as wives, children or other family members in a household (Kolibonso 2000, 99–100). The National Commission on Anti Violence against Women (*Komisi Nasional Anti Kekerasan terhadap Perempuan*, hereinafter *Komnas Perempuan*) found that the level of violence against women (here in after VAW) has consistently increased from year to year. In 2001, when Komnas Perempuan first compiled statistical data with regard to the VAW, there were 3,160 cases. The cases went up to 5,163 in 2002, 7,787 cases in 2003, and 13,968 cases in 2004 (Komnas Perempuan 2005, 2, 5). Since Komnas Perempuan acquires more data of VAW from its partner institutions, which include district courts, police, legal aid, womens' crisis centers, hospitals, local offices of the Ministry of Women's Empowerment and Child Protection, and Religious Courts (divorce cases), the number of VAW cases has reached more than three hundred thousand (Komnas Perempuan 2016, 1–2, 8). Komnas Perempuan reported that in 2017 there were 348,446 cases of VAW, of which 9,609 cases happened in the household realm/personal domain (Komnas Perempuan 2018, 1, 7-11, 14-15).

Domestic violence was not considered a specific crime by the state until the promulgation of Law No 23/2004 concerning the Elimination of Violence in Household (*Undang-Undang Penghapusan Kekerasan dalam Rumah Tangga*, hereinafter *UU PKDRT*). Prior to the enactment of the UU PKDRT, many cases of violence were not reported to the police. The victims of violence cases lost legal aid and protections from the state. Conversely, women could become criminalized by taking revenge or murdering their husbands. Unfortunately, the reasons for women taking such actions, such as self-defence from torture perpetrated by their husbands, are rarely taken into account by law enforcement officers/agencies, or during the trial. This is due to the lack of regulations that specifically address the issue of VAW.

Significantly, the Indonesian government promulgated the UU PKDRT on 22 September 2004. With this law, the government committed to eliminating violence in the household and tried to protect women and children, who are vulnerable to violence, by enacting the specific law and related regulations, as well as implementing programs that provide victims of VAW access to justice. However, the promulgation

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of the UU PKDRT alone is inadequate if it is not followed by the necessary measures to prevent the potential for domestic violence in the future. Violence in the household is a complex and difficult case to be revealed. This is because there are many assumptions and perceptions intertwining with cultural and religious understandings, as well as aspects of biology, psychology, economics and politics (Poerwandari 2000, 14–19). Failure to understand the aforementioned contributing factors will have an impact on efforts to eliminate domestic violence. For example, economic dependence has forced women to endure abusive acts from those who have provided maintenance. Domination and subordination of women in marriage – where husbands are deemed to be the breadwinners and wives the homemakers – has meant wives are considered economically unproductive and burdens upon their husband. This has psychologically oppressed women, who often become the target of their husband's anger (Poerwandari 2000, 18).

This article discusses the opportunities and challenges for eliminating domestic violence in Indonesian Muslim society. The focus of the study is based on a Komnas Perempuan report that found a high rate of Muslim divorces in the Religious Courts featured instances of violence against wives (Komnas Perempuan 2018). Besides that, there is resistance from Muslims in Indonesia to several attempts to renew the marriage law because the reformation is deemed to contradict classical Islamic jurisprudence (Alfitri 2015). Meanwhile, there are several provisions of marriage law, both national and Islamic, which are not in line with the concept of women's rights let alone the requirements of UU PDKRT. Previous studies have shown that the so-called incompatibility of Islam and gender equality is rooted in a biased classical interpretation of the Qur'an (Ahmad and Hassan 2007; Hassan 1988; al-Hibri 2003; Wadud 1999). This biased interpretation has been the basis of classical Islamic jurisprudence on marriage, which has been transplanted into Islamic marriage law in Muslim countries (Alfitri 2014; Anwar and Rumminger 2007; Rokhmad and Susilo 2017).

This article argues that the efforts to eliminate violence in households through the promulgation of the UU PKDRT face considerable challenges because the provisions of Indonesian family laws are incompatible with the requirements of the UU PDKRT and women's rights. This incompatibility is worsened by the contributing

socio-cultural factors of VAW in the household in Indonesia, including a patriarchal culture, biased religious understandings, and people's perceptions (Bennett and Idrus 2003; Poerwandari 2000; Riggins 2004).

This study employs normative and socio-legal approaches towards the enactment of Law on the Elimination of Domestic Violence and the challenges to its effective implementation. The normative approach is adopted in examining the provisions of the Law that create norms conducive to the goal of domestic violence elimination. Likewise, the normative approach is also used to solve the conflict in law that arises when analyzing the compatibility of related legislations to the elimination of violence in the household. To this end, this paper first discusses violence against women and law in Indonesia. In this section, the situation concerning protections for women before the UU PKDRT is scrutinized. Next, an analysis is conducted on the impact of a lack of regulation relating to violence against women, and the measures taken by the government to solve this problem. Following this discussion, the next section analyses the UU PKDRT itself and the mandate given by the UU PKDRT to the government regarding instrumental steps that should be taken in order to forestall the possibility of domestic violence. Finally, this paper analyses the provisions in Indonesian marriage laws which become loopholes enabling the possibility of violence against women in the household. In this part, a socio-legal approach is applied to substantiate the arguments of the vulnerability of women to domestic violence in marriage because of discriminative marriage laws. Secondary data from Komnas Perempuan reports and cases from women crisis centers that have been published in the form of reports or journal articles are used for this purpose. The exception is table 1, where the data is from the original case studies of the Religious Courts' decisions on the wife-initiated-divorce lawsuits that involved domestic violence.

Women, Violence and Law in Indonesia

Protection for Women from Violence before the Promulgation of UU PKDRT

From the perspective of law and society, there is a mutual relationship between the two, with its different actors, institutions and processes. Law is shaped by society and, at the same time, it also shapes the society. Law also mirrors norms and values held by

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society. The response of a legal system with regard to cases of violence against women will mirror, to some extent, prevailing perceptions in the community when a law was formulated. If the perception of gender relations is influenced by patriarchal culture, the provisions of law might then discriminate against women and fail to provide ample protection for women from violence. Patriarchal culture justifies male dominance. Men are superior to women in every aspect of life (Dzuhayatin 2002, 9–10). Such an unequal gender dynamic might enable violence against women either physically or psychologically, such as sexual harassment, battery or marital rape. Since these deeds are deemed to be natural in patriarchal society, the law will not stipulate them as criminal. Conversely, a law that does not criminalize perpetrators of these deeds will shape the community perception that violence against women is legal.

Indonesian communities are commonly feature a bilateral or parental kinship. In this kind of kinship, a husband or wife belong to their own kinship group, and children belong to the kinship groups of their parents. Within such a kinship system, the status of women is usually equal to that of men (Soewondo 1976, 126). As many Indonesian feminists have observed, however, the portraits of Indonesian women across all type of kinship systems are largely discouraging. This is because a patriarchal culture prevails among more than 200 ethnic groups in Indonesia, even though they maintain patrilineal, matrilineal or parental kinship systems (Munir 2005, 7).

The patriarchal culture was also adopted by the state and then introduced into most of its legal policies, especially during the new order regime. Prior to the enactment of UU PDKRT, the situation for protecting women from violence was very apprehensive. This is because laws and regulations in Indonesia still contained a lot of insensitive gender provisions that were prepared long before the concept of gender, human rights and women's rights became public discourse in Indonesia. In addition, government agencies and law enforcement officers are also not ready to handle cases of violence against women that are victim-oriented (sensitive to the experiences of female victims of violence). Some law enforcement officers instead blamed women as a trigger or the cause of events they experienced.

An example of gender insensitive law is the Criminal Code (*Kitab Undang-Undang Hukum Pidana*, hereinafter *KUHP*) related to

crimes against the body and female sexuality. The KUHP categorize this crime as mere crime against morality (ethical crimes). In doing this, the KUHP is more oriented to community perception as to what extent an assault on a woman's body and sexuality is deemed to in breach of the moral code in a community, rather than to situations faced by women as the victims (Munir 2005, 7). Meanwhile, women's experiences have been disregarded as instrumental parts before the law. As a result, there is some violence experienced by wives in marriage or sexual assault faced by women in the public domain that is not regulated by the KUHP.

Harkristuti Harkrisnowo analysed that violence-related provisions in the KUHP focus more on physical violence and do not specifically address the array of violence that women can experience (Harkrisnowo 2000, 83). The KUHP only describes women as the victims of violence in the case of rape outside marriage (article 285), rape of an unconscious woman (article 286), statutory rape (article 287), abortion without the woman's consent (article 347), trafficking of women (article 297) and the kidnapping of women (article 332) (Bennett and Idrus 2003, 45). Beyond these crimes, other types of physical violence might not be covered by the KUHP. Even though women are being victimized through marital rape or sexual harassment, the perpetrators of violence might not be prosecuted because of the unavailability of specific regulations (Harkrisnowo 2000, 84).

The provision of rape in the KUHP, for example, narrowly defines what constitutes rape, so that marital rape and deceitful rape (that which occurs during dating period) are excluded. According to article 285, a rape is an act of forced or intimidated sexual intercourse (*bersetubuh*), committed by a man to a woman who is not his wife, that takes place outside of marriage. By defining rape in this way, rape within marriage is not only absent in Indonesian legislation, but is legally impossible (Bennett and Idrus 2003, 45; Riggins 2004, 427). Further, such a definition may infer that a husband's right to rape his wife is enshrined in [the KUHP] because wives are legally excluded as potential victims of rape (Bennett and Idrus 2003, 45).

In addition, the term 'sexual intercourse' (*bersetubuh*) in the KUHP is restrictively applied to particular sexual activities. This is because the KUHP still refers to the definition of 'sexual intercourse' employed by the Dutch Law *Arrest Hooge Raad* 5 February 1912. In this law,

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bersetubuh means intercourse between a man and a woman where the penis is inserted into the vagina in order to have a child (Harkrisnowo 2000, 85). Thus, any sexual violence which does not meet the above criteria cannot be prosecuted under the provision of rape (article 285) according to the KUHP. Instead, such a case might be reduced to mere obscene crime (*pencabulan*) or, even worse, to common sexual intercourse.

Forced or intimidated sexual intercourse, as a matter of fact, does not necessarily involve the insertion of a penis into a vagina. Forced or intimidated oral sex, anal sex or insertion of objects into the vagina are also experienced by victims. All of these forms of sexual intercourse have been categorized as rape (Harkrisnowo 2000, 85). Hence, it appears that women are discriminated against under Indonesian law, as the KUHP fails to protect women from all kinds of sexual violence.

Yet, some argue that the KUHP does cover all types of sexual violence. This is because sexual violence that does not meet the criteria of rape specified in article 285 can be prosecuted under the provision for obscene acts (*perbuatan cabul*) in article 289-298 (Sampurna and Luluhima 2000, 58). Obscene acts, however, are not defined clearly by the KUHP. Based on the articles 289-298 and the adopted definition of sexual intercourse (*bersetubuh*), obscene acts cover any sexual activity – such as oral sex, anal sex, petting or touching genital organs – which does not involve inserting a penis into a vagina. There are different classifications of obscene acts stipulated in the KUHP, such as: a forced/intimidated obscene act (article 289); an obscene act against an unconscious person (article 290(1)); a statutory obscene act (article 290(2)); a statutory obscene act with enticement (article 290(3)); and statutory same sex obscene acts (article 292) (Sampurna and Luluhima 2000, 58).

The maximum sentence for forced/intimidated obscene acts (article 289) is only nine years imprisonment, while the maximum sentence of article 285 is twelve years imprisonment. This does not seem fair for the victims of obscene acts, because the effects of this crime might be as significant as that of rape. Meanwhile, female victims of obscene acts (including rape) often endure an unfair police investigation process. This is because biased police officers tend to stigmatize women as either being responsible for the crime occurring or participating in it (victim blaming and victim participating) (Harkrisnowo 2000, 90).

The investigation processes, therefore, consider rape as no more than illicit sexual intercourse. Thus, it becomes the obligation of victims to prove otherwise (to fulfill the criteria of article 285) during the police investigation process. Otherwise, the case of rape will be downgraded to a mere obscene act by the public prosecutor. According to Budi Sampurna, of all rape cases reported to the Jakarta police office (*Polda Metro Jaya*) in 1997, only 25% fulfill the criteria of rape as specified in article 285 (Sampurna and Luluhima 2000, 58).

These facts reveal that the KUHP falls short in dealing with cases of violence against women. The KUHP is more concerned with the rights of offenders than the rights of victims. The KUHP, for example, explicitly asserts the rights of the accused to acquire legal aid and assistance in his trial, while the rights of victim are less regulated on the premise that she will be represented by the public prosecutor in the trial. Considering the complex nature of sexual violence cases (including all types of domestic violence cases), this is insufficient. The victims also need legal aid during the police investigation to avoid victim blaming and victim participating. Further, they really need psychologists and counsellors to support their mental health, as well as police protection from the threat of revenge attacks by offenders (Sampurna and Luluhima 2000, 58).

The shortcomings of the KUHP are also obvious in the case of marital rape. As previously mentioned, rape cannot take place between a man and a woman who is not his wife inside of marriage. Yet, some argue that marital rape, together with other types of violence in the household, can be prosecuted under article 351 and 352 of the KUHP that are concerned with ill treatments (Sampurna and Luluhima 2000, 59). Ill treatments are punished with imprisonment for a maximum of two year and eight months. If the action caused heavy injuries, the offenders are sentenced with imprisonment for a maximum of five years. If it caused death, the offenders are sentenced to jail for a maximum of seven years. However, these provisions generally regulate ill treatments without further qualification, and they are more concerned with physical impacts. Meanwhile, the effects of domestic violence also harm the victims mentally, with effects such as depression, anxiety, battered woman syndrome or a desire to commit suicide (Sampurna and Luluhima 2000, 59).

The KUHP becomes ineffective to deal with cases of violence in the household since it fails to address the complex nature of domestic

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violence. Further, use of the KUHP may inflict loss for the victims. For example, the obligation to present two witnesses may be difficult for a victim if violence happened in a private arena, as nobody would witness it, and the victim and offender may desperately attempt to keep it a family secret.

The lack of specific regulations has also prevented a lot of domestic violence cases being reported to the police because the victims feel that procedures for domestic violence cases do not guarantee that the offender will be punished (Harkrisnowo 2000, 82–83). This might be caused by a situation where police stations have not had specialised officers and services that are capable of handling such cases. As a consequence, victims have lost faith in the legal apparatus (the police, the public prosecutors, and the courts). Furthermore, due to the lack of specific regulations, women experiencing violence are unaware of their status as victims, as well as their rights, because no regulations stipulate what constitutes violence against women (Harkrisnowo 2000, 82–83).

Having discussed the above, it is not an exaggeration to suggest that the protection of women from violence before the promulgation of the UU PDKRT is at risk. The existing regulation (the KUHP) discriminates against women in cases of domestic violence and inflicts losses upon women when it is still used to resolve the cases.

The Law of the Elimination of Violence in the Household and Its Emphatic Provisions

Law No 23/2004 concerning the Elimination of Violence in the Household (UU PKDRT) consists of 10 chapters and 56 articles. This law is intended to provide comprehensive legal protection against any type of domestic violence. According to the UU PKDRT, domestic violence is:

> [a]ny act against anyone, particularly a woman, bringing about physical, sexual, psychological misery or suffering, and/or negligence of the household, including any threat to commit an act, force, or the seizure of freedom in a manner against the law within the scope of the household.

It is immediately apparent from the above definition that some types of violence that could not be prosecuted under the KUHP are now explicitly considered as crimes. This is because the UU PKDRT is responsive to existing forms of domestic violence in Indonesia, not only criminalizing violence that has an impact on a woman's

body but also taking into account the psychological and economic effects.

To avoid any misunderstanding over the subjects of the law, i.e. households (*rumah tangga*), the UU PKDRT clearly defines who are protected by the law. They are: 1) husbands, wives and children; 2) any person who have a familial relationship (e.g. blood, marriage, suckling at the same breast, a care relationship and guardianship) with people in point 1; 3) any people who work to help the household and live there. Here, it can be seen that the UU PKDRT tries to avoid bias with regard to domestic violence because it also mentions the possibility of men being victims. Further, the UU PKDRT also protects housemaids from violence. This is a significant step taken by the government to protect the rights of housemaids' (mainly women) who are vulnerable to violence (Komnas Perempuan 2005, 5–6). Up until now, the government has not provided regulations protecting housemaids from excessive workloads and inhumane working conditions.

As noted above, the UU PKDRT comprehensively covers any type of violence in the household, which includes: physical violence, psychological violence, sexual violence and negligence of the household (Komnas Perempuan 2005, 5–6). Physical violence comprises any 'act bringing about pain, sickness, or injury'. Psychological violence includes any 'act bringing about fear, loss of self-confidence, loss of capability to act, hopelessness, and/or serious psychic suffering on someone'. Meanwhile, sexual violence may be:

> '[f]orcing sexual intercourse carried out against an individual living within the scope of the household; forcing sexual intercourse against one of the individuals within the scope of the household for a commercial purpose and/or a certain purpose.'

There is an important improvement from this provision. The UU PKDRT criminalizes marital rape, which was not previously regulated by the KUHP. Yet, the UU PKDRT neglects sexual violence, as well as any kind of violence during the dating period. Komnas Perempuan classified violence during the dating period as the same as violence in the household, and it is recorded that there were 321 cases of violence during the dating period in 2004 and, more recently, 2,734 cases in 2015 (Komnas Perempuan 2005, 5). In this regards, the UU PKDRT falls short in terms of the efforts of the government to combat violence against women during the dating period. If it is argued that violence

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during the dating period can be criminalized under article 285-286 (rape), article 289 (obscene acts), or article 351-355 (ill treatments) of the KUHP, these provisions seem insufficient. As mentioned above, the implementation of the aforementioned general provisions in cases of violence during dating might discriminate and inflict losses upon women.

Yet, the UU PKDRT benefits women in Indonesia who are stereotyped as 'mere homemakers', meaning that most of them are economically dependents upon their husbands. Based on article 9 of the UU PKDRT, if a husband neglects to provide a livelihood for his wife, he can be charged with imprisonment or a fine because of negligence. Further, negligence may also be applied to a husband who '[bring]s about economic dependence by limiting and/or prohibiting [his wife] from working properly inside or outside the house, thereby placing the victims under the control of the [husband]'.

Unlike the KUHP, the UU PKDRT specifically regulates the victim's rights. Thus, a victim of domestic violence is now entitled to acquire the protection of her family, the police, the district attorney's office, a court, an advocate, or a social institution such as a women's crisis centre, 'either for temporary protection or for a specific time period based on the ruling of a court'. Further, medical treatment in accordance with her injuries, confidentiality of her case would be ensured, and counsel by a social worker and a lawyer, as well as spiritual guidance, would also be provided for the victim. All of these entitlements would assist the victim of domestic violence in recovering from the trauma.

Based on the above, it appears that the UU PKDRT approaches cases of violence in household more comprehensively than the KUHP. Therefore, it is hoped that the number of domestic violence cases can be minimized because provisions of the UU PKDRT encourage and facilitate the victims to speak out about what happened. Heavier punishments (imprisonment or fines) are also imposed on offenders. All of these are expected to deter future violence in household.

In addition, the UU PKDRT tries to address people's ignorance with regard to domestic violence. Article 15 of the UU PKDRT obliges anyone who hears, sees or knows of the occurrence of violence in the household to make an effort in accordance with his/her capability to: 'prevent the continuation of crime; provide protection to the victim;

provide emergency assistance; and assist in the process of submission of an application for a protection ruling'. Even though the UU PKDRT does not impose any punishment for those who fail to do so, the UU PKDRT has encouraged people to be more concerned with violence in the household. This is because people's latent ignorance, coupled with discriminative provisions in family law, might also impede an effective implementation of the UU PKDRT.

VAW, Women's Rights and the Government's Obligation

The government's efforts to create an environment for eliminating household violence through its legal policies must also be analysed. In accordance with the philosophy of the *Pancasila* (the five basic principles of the state's ideology) and the 1945 Constitution of the Republic of Indonesia, to obtain a sense of security and to be free from all forms of violence have become the fundamental rights of every Indonesian citizen. Impressively, the 1945 Constitution introduced human rights' provisions. These are the right to be free from torture, the right to be free from discriminatory treatment, and the right to protection from such discriminatory treatment.

The government takes violence seriously (including domestic violence) in Indonesia because violence in all of its forms is a type of discrimination, a human rights violation, and a crime against human dignity that must be eradicated. This is especially true after the demise of Soeharto's authoritarian regime. The regimes of Indonesia have shifted from an authoritarian to a more democratic form of government, which is marked by, among other things, their commitment to enforcing human rights (Juwana 2003, 644). This commitment is manifested, by ratifying international human rights treaties, promulgating laws that promote human rights, and repealing existing regulations that have dispossessed basic human rights (Juwana 2003, 654–647). For example, by the promulgation of Law No 39/1999 Concerning Human Rights, there are provisions that strongly support womens' rights and empowerment. Article 30 of the clearly asserts that everyone is entitled to a sense of security, tranquility and protection from threat.

The above commitments to enforcing human rights are further strengthened by the promulgation of Law 23/2004 Concerning the Elimination of Violence in the Household. The law requires the

government to guarantee the elimination of domestic violence by preventing the occurrence of violence, taking action against offenders and protecting victims. Hence, it becomes the responsibility of the government to take necessary measures to prevent violence in the household.

With regard to this obligation, the UU PKDRT mandates the government to ensure that the objectives of the promulgation of the Law No 23/2004 – to prevent, to protect, to take action and to safeguard the unity of the household – can be realized. In relation to this, the government shall:

1. Formulate policy regarding the elimination of violence in the household;
2. Organize communication, information, and education regarding violence in the household;
3. Organize socialization and advocacy regarding violence in the household; and
4. Organize gender-sensitive education and training on the issue of violence in the household and shall establish gender-sensitive service standards and accreditation.

As far as socialization and advocacy is a concerned, the government has campaigned through national mass media about this law. In the campaign, the government tries to make people aware that, for instance, hitting or abusing wives verbally is violence, and therefore in breach of the law.

With regard to the victims of domestic violence, the government will provide special service rooms at police stations, as well as officials, health personnel, social workers and spiritual mentors. This is done to assist the victims during the investigation process and to help them recover from trauma. Based on the 2005 Komnas Perempuan report, the government has developed installations for domestic violence victims in nine hospitals and provided specialist paramedic teams for victims in four hospitals (some hospitals have also cooperated with womens' crisis centres and special service units at police stations). It has also developed 260 special service units for domestic violence cases at police stations, as well as educated and trained legal apparatus (police, judges in district courts and religious courts) on the issue of violence in the household, as well as encouraged their institutions to establish gender-sensitive service

standards (Komnas Perempuan 2005, 12–15). During the period of 2014-2015, Komnas Perempuan has also noted conducive policies adopted by local governments, including service facilities for the victims of VAW in nine provinces/districts/municipalities (Komnas Perempuan, 2015, p. 74). Recently, Komnas Perempuan has just signed the Memorandum of Understanding with the Witness and Victim Protection Agency (*Lembaga Perlindungan Saksi dan Korban or LPSK*) for protecting victims and witnesses of VAW cases, implemented the integrated handling of VAW cases with 13 ministries, and provided free *visum et repertum* (medico-legal reports) in designated hospitals for the victims in Jakarta (Komnas Perempuan 2018, 2, 86–92).

Nevertheless, all these efforts are inadequate as long as the provisions of Indonesian family law still perpetuates gender discrimination in marriage life. Such provisions, together with the latent ignorance of the people, might be counter-productive to the efforts towards the elimination of violence in the household.

Challenges to an Effective Implementation of UU PDKRT

Domestic Violence and Public Latent Ignorance

As many have argued, gender differences within patriarchal communities have subordinated women to men. This situation often triggers gender inequalities that enable injustices against women. Unfair treatment of women is usually manifested as marginalization, subordination, stereotyping, socialization of the values of gender roles, violence and the double burden against women (Fakih 1999, 12). In addition, talking about violence against women reveals acts and practices deemed to be normal in Indonesia. There are some customs that can be categorised as violence against women, where the perpetrators –male or female – are unaware that such a custom is violence (Murniati 2004, 222).

A case in point is the ideas of *siri'* (honor and shame) in *Bugis* society, studied by Idrus and Bennet. Maintaining positive *siri'* (honour) and avoiding negative *siri'* (shame) becomes the chief responsibility for every male member of the family, in particular the elders (*tomasiri*) (Bennett and Idrus 2003, 48). Accordingly, *siri'* may be protected and offended through the social regulation of female sexuality, adherence to customary law (*adat*), and adherence

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to religious tenets for Muslims. With regard to female sexuality, the *Bugis* society considers it to be 'innately shameful, embodying heightened potential for negative *siri'* or shame' (Bennett and Idrus 2003, 47).

In *Bugis* marriage, heterosexual sex is stereotyped with the husband as the aggressive, active party, while the wife is passive and compliant. As a consequence, women are not deemed to possess bodily integrity; they are sexual objects. Sex within marriage is only intended for affording pleasure to men, while women have no rights to negotiate their sexual desires and needs (Bennett and Idrus 2003, 48–49). Therefore, sexual intercourse in marriage is an irrevocable consent, regardless of the situation for the wife, and however the husband wants to do it. Any behaviour from the wife in trying to assert their sexual desires and needs, or to resist their husband's request, can be considered to bring negative *siri'* (Bennett and Idrus 2003, 49). Idrus and Bennet found that the idea of *siri'* has rendered domestic violence an alien concept in *Bugis* society because:

> [m]en are understood to be both the primary protectors of *siri'* and to have authority over their wives, the use of violence and coercion of their wives is easily legitimated. Men who behave in a sexually aggressive manner and who discipline their wives through acts of marital violence typically understand themselves as performing appropriate masculinity (Bennett and Idrus 2003, 49).

The idea of *siri'*, which is deeply entrenched in individual thinking and behaviour, as well as in community traditions in the *Bugis* society, has prevented many women from disclosing their suffering, healing their injuries, and seeking support from their families (Bennett and Idrus 2003, 53; Riggins 2004, 435). Women are shamed, should violence they experience in the household become public knowledge. Instead of receiving help by reporting their husband's violence, they suffer social violence because the community stigmatizes and subsequently isolates them. They become objects of gossip because they offended their husband's *siri'*. Further, their families discipline them by distancing from them for the disgrace they are perceived to have brought (Bennett and Idrus 2003, 53; Riggins 2004, 435). Here, it can be seen that culture may also make people neglect the existence of violence in the household. This kind of taboo arguably prevails in other societies in Indonesia.

In a community which neglects violence against women as violence, such an action is not considered a crime. As a consequence, any effort to criminalize such an action from a legal point of view will be responded to negatively, to some extent it might even be rejected by some people (Murniati 2004, 235). This is because violence in the household is deemed by the community as an ordinary thing in married life as a method to 'educate' wives. Conflict between a husband and a wife is considered as an internal affair or a family secret. Thus, the offenders will not let others, even their relatives, be involved in their domestic business, while the victims desperately cover their husband's violence, to avoid receiving blame from the community (Poerwandari 2000, 20).

Taken together, it is not surprising that there are many myths surrounding violence in the household. It is believed, for example, that only men with mental problems could commit violence against their intimate partners. Only poor women can become the target of assault, therefore women from economically fortunate families will not experience violence. Women have provoked men's anger, by resisting or neglecting men's desire, so therefore women deserve to get hit (victim participating). Women enjoy violence, as if they do not, they will challenge it or leave their abusive partners (Poerwandari 2000, 23).

These myths have presented women with a great dilemma with respect to violence in the household. On the one hand, women need justice for their losses. On the other hand, people's perceptions have thwarted them from doing so. Through the promulgation of UU PKDRT, socializations for evoking people's awareness that domestic violence is still violence have been undertaken by the government and NGOs through media campaigns. Subsequently, Komnas Perempuan observed a significantly steady increase in the number of cases of VAW: from 14,020 cases in 2004, 54,425 cases in 2009, 143,586 cases in 2009, 321,752 cases in 2015, to 348,446 cases in 2017 (Komnas Perempuan 2016, 1, 2018, 1).

This situation indicates, on the one hand, an increasing awareness of the victims of VAW and their families of the need to report cases to the police or other designated institutions. On the other hand, it also suggests significant changes in community behaviour, from perceiving VAW as a personal matter that must be concealed, to considering VAW

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as a crime that must be punished (Komnas Perempuan 2018, 1–2). Komnas Perempuan, nevertheless, acknowledges that the statistical data relating to VAW does not depict the true number of occurrences. The VAW statistical data is like an iceberg. This is because the acquired statistical data will depend greatly upon how many VAW cases are recorded in the affiliated institutions (e.g. district courts, religious courts, women's organization, police stations, district attorney offices, hospitals, women's crisis centers, legal aid offices, and local offices of the Ministry of Women's Empowerment and Child Protection), where Komnas Perempuan has sent questionnaires (Komnas Perempuan 2018, 7–10).

UU PDKRT and Discriminating Status of Women in Family Law

In its two latest reports, Komnas Perempuan reveals that there were 321,752 VAW cases in 2015 and 348,446 cases in 2017. From the 2015 report, 305,535 cases related to divorce cases that have been judged in the Religious Courts as per data from *Badan Peradilan Agama*, hereafter BADILAG. *Cerai gugat* (divorce initiated by the wife) cases ranked number one (252,587), followed by *cerai talak* (unilateral divorce by the husband) cases (98,808), and *ijin poligami* (permission to polygyny) cases (675). This divorce pattern is similar to that of 2014 (*cerai gugat* was 240,828 cases, *cerai talak* was 104,346, and *ijin poligami* was 701 cases) (Komnas Perempuan 2016, 10–11). Similar to the 2017 report, 335,062 divorce cases out of 387,077 overall cases that went to the Religious Courts are categorized by Komnas Perempuan as VAW cases. Of those numbers, 273,764 were *cerai gugat* cases, 100,741 were *cerai talak* cases, 681 was *ijin poligami* cases, and 11,891 were *dispensasi kawin* cases. The large number of *cerai gugat* cases filed by women to the Religious Courts raises concerns of the status of women in marriage. Allegedly, the strong influence of patriarchal culture, coupled with discriminative provisions of family law in Indonesia, has subordinated women within the marriage, which in turn contributed to the high number of *cerai gugat*. [Komnas Perempuan was unable to include 2,026 divorce cases from the District Courts in the 2017 report because it could not track down the causes of divorce like the data of BADILAG].

In contrast to previous years, the Religious Courts of 2017 have categorized the causes of divorce more specifically to include the

category of violence against women. There are 14 categories altogether, namely: adultery (1,822 cases), alcohol abuse (3,990 cases), drug abuse (1,128 cases), gambling (2,034 cases), one party leaving (64,965 cases), sentenced to imprisonment (4,380 cases), polygamy (1,596 cases), domestic violence (7,767 cases), disability (413 cases), disputes and continuous argument (140,375 cases), forced marriage (1,879 cases), apostasy (512 cases), economy (96,992 cases) and other reasons (7,209 cases). Of great help in this new categorization is that the term "unhealthy" polygamy becomes merely polygamy as the cause of the divorce. According to Komnas Perempuan, this demonstrates the awareness of the BADILAG that the essence of polygamy is violence against women. In addition, when in previous years there was no category of domestic violence, in 2017 the BADILAG included it as one of the causes of divorce (Komnas Perempuan 2018, 53). It is noteworthy that at the national level and in most provinces, the category "continuous disagreements and quarrels" occupies the greatest numbers when compared to other categories. The largest percentage of "no harmony" is 41% nationally, and at most provinces may also include domestic violence and sexual violence, where the plaintiff for divorce (the wife) hesitates to express the real reason because of the culture of patriarchy, social pressure, not wanting to be blamed, and the burden of providing proof. In certain provinces, such as Aceh, West Sumatera, Riau, South Sumatera, Bengkulu, West Kalimantan, East Kalimantan, Kalimantan South and South Sulawesi, the number of cases of "no harmony" divorce is relatively striking compared to other categories. According to Komnas Perempuan, there are still euphemisms used by the state that obscure the real cause of divorce. Other categories such as "continuous disputes and quarrels" and "one party leaving" are broad-ranging, and could represent many things, including domestic violence (Komnas Perempuan 2018, 55). Komnas Perempuan is correct when taking into account this catch-all cause of divorce actually contains domestic violence against women. Based on the case studies of thirteen decisions on *cerai gugat* by the Religious Courts across Indonesia, so-called continuous disputes and quarrels between the wives (plaintiffs) and husband (defendants) have involved physical, psychological and economic violence perpetrated by the husbands against the wives, as described in table 1.

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Table 1. Domestic Violence in the Divorce-Initiated-by-Wife Cases

No	Case #	Reasons for Divorce	Type of DV (Trial Facts)	Note
1	33/Pdt.G/2012/ Ms.Skl Singkil, Nangro Aceh Darussalam, 2012	• KDRT: hitting and kicking wife; • No maintenance for wife and child for 1.8 years.	• Physical • Verbal • Economic neglect	• Divorce lawsuit is granted; • Husband was sentenced 8 months by the District Court earlier.
2	1320/Pdt.G/2011/ PA.Sm Sumenep East Java, 2011	• KDRT: (not specified); • No maintenance for the wife and the children • Wife was asked to work at a massage parlour.	• Physical (verbal not applicable) • Economic neglect	Divorce lawsuit is granted.
3	41/Pdt.G/2016/ PA.Clg Cilegon, Banten, 2016	• KDRT: hitting, kicking, slapping, & grabbing wife's hair; • Murder threat to wife • Bad prayer (wish wife dies)	DV proved (but not specified in reasoning)	• Divorce lawsuit is granted; • Verdict is more based on the reason PPTM than KDRT.
4	121/Pdt.G/2012/ PA.Cbn Cirebon, West Java, 2012	• PPTM: no maintenance and conjugal relationship for 6 months; • KDRT: hitting wife; verbal abuse; • Husband's affairs.	• Physical • Verbal	• Divorce lawsuit is granted; • Verdict is based on both PPTM and KDRT

5	3004/Pdt.G/2013/ PA.Jr Jember, East java, 2013	• PPTM which involve KDRT (the wife endured it) • KDRT which hospitalize wife (incident not specified).	Verbal	• Divorce lawsuit is granted; • Verdict is based on both PPTM and KDRT; • Husbands was reported to the police in the incident (no information on KDRT trial)
6	295/Pdt.G/2013/ PA.JU Jakarta Utara, 2013	• PPTM which involve KDRT (slapping wife); • Husband temperamental and rude to wife; • Husband love hurting himself (hurting arms).	Economic neglect	• Divorce lawsuit is granted; • Verdict is more based on the reason PPTM than KDRT.
7	17/Pdt.G/2013/ PA.Pyk Payakumbuh, West Sumatera, 2013	• PPTM which involve KDRT (stepping on neck, hitting, throwing stone to wife); • Polygamy of husband (2009, undocumented) • No contribution to household economy in Nov and Dec 2012.	• Physical • Verbal • Economic neglect	• Divorce lawsuit is granted; • Verdict is more based on the reason PPTM than KDRT.

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8	445/Pdt.G/2014/ PA.Bdg Bandung, West Java, 2014	• PPTM which involve KDRT (acts not specified) • Husband deny the marriage	Physical and verbal	• Divorce lawsuit is granted; • Verdict is based on both PPTM and KDRT • Husbands was reported to the police in the incident (no information on KDRT trial)
9	252/Pdt.G/2012/ PA.Pct Pacitan, East Java, 2014	PPTM which involve KDRT (insufficient maintenance; temperamental and jealous ending with DV)	• Economic neglect • DV proved (but not specified in reasoning)	• Divorce lawsuit is granted; • Verdict is more based on the reason PPTM than KDRT.
10	1325/Pdt.G/2014/ PA.Ckr Cikarang, Banten, 2014	• PPTM which involve KDRT • Polygamy of husband (2009 and 2013, undocumented)	Physical and verbal	• Divorce lawsuit is granted; • Verdict is based on both PPTM and KDRT • polygamy is regarded as cause of lawsuit granted

11	275/Pdt.G/2014/ PA.Dgl Donggala, Central Sulawesi, 2014	• PPTM which involve KDRT: • Husband is drunk and commit DV); • Husband going out at night; • Husband keep his own earns; no maintenance during PPTM	Physical and verbal	• Divorce lawsuit is granted; • Verdict is more based on the reason PPTM than KDRT.
12	714/Pdt.G/2014/ PA.Tgt Tanah Grogot, East Kalimantan, 2014	• PPTM which involve KDRT: • Insufficient maintenance • Husband going out at night • Selfish; ignoring wife and kid • Abusing wife verbally	Verbal	• Divorce lawsuit is granted; • Verdict is based on both PPTM and KDRT
13	110/Pdt.G/2015/ PA.Sidrap Sidrap, South Sulawesi, 2015	PPTM which involve KDRT (husband accused wife has an affair)	Physical and verbal	• Divorce lawsuit is granted; • Verdict is based on both PPTM and KDRT

KDRT: Kekerasan dalam Rumah Tangga (Domestic Violence);
PPTM: Perselisihan dan Pertengkaran Terus Menerus (No Harmony)

This necessitates an understanding of the status of women under Indonesian family law by analysing provisions related to rights and obligations of women in married life. There are two effective family laws in Indonesia: first, Law No 1/1974 concerning Marriage Law which prevails for all Indonesian citizens. Second, the 1991 Compilation of Islamic Law (*Kompilasi Hukum Islam*, or KHI) which specifically regulates Muslim family law. The KHI consists of three books (marriage, inheritance and *waqf*), in which Marriage Law is regulated by book one. Yet, both laws must be read to understand the status of Muslim women, because the KHI heavily qualifies the Marriage Law in accordance with

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Islamic law (Hooker 2003, 123). According to Hooker, the contents of marriage law in book one are "straight-out reproduction of *fiqh* [the classical formula of Islamic jurisprudence], though in a much simplified form" (Hooker 2003, 23). Thus, it is important to realize this when analysing the provisions of the KHI.

Stereotypes of the Gender Roles of Women and Men in Marriage

The promulgation of the Marriage Law in 1974 was intended to elevate the status of women in marriage. By means of the Law, the government tries to limit arbitrary divorce and polygyny as well as to eliminate child marriage (Azra 2003, 78; Cammack, Young, and Heaton 1996, 45). Yet, there are some provisions in the Law which exemplify the government's ambivalence with regard to the aforementioned aims, in as much as they affirm the subordination of women (wives) to men (husbands). Article 31(1-2) of the Marriage Law, for example, stipulates that the rights and responsibilities of wife and husband are equivalent in household life and society, and both wife and husband maintain the right to conduct legal actions (and this provision is also enshrined in article 79 (2-3) of the KHI). However, article 31(3) stereotypes the status of husband and wife, in which the husband is deemed to be the breadwinner, while the wife is considered to be the homemaker. The same statement is also made by article 79 (1) of the KHI.

The domestication of women as merely homemakers under Indonesian family law has further strengthened the subordination of women to men. This provision has neglected the reality that there are more and more women in Indonesia who serve as the household's breadwinner. Yet, because of this, women's existence as the breadwinners are not recognized. This is a form of discrimination against women. Thus, article 31 (3) of the Marriage Law and article 79 (1) of the KHI are in conflict with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Indonesia ratified CEDAW in 1984 (reservation to s. 29 (1)). In this regard, the government has made gender equality a part of the national agenda (A. Alfitri 2012, 302).

Article 2 and 5 of the CEDAW oblige the states that have ratified it to adjust regulations so as to be compatible with CEDAW contents. This includes eliminating discriminative practices of its apparatus and institutions, repealing discriminative law against women, and

socializing cultures that promote equality as well. Further, article 15 (1) of the CEDAW asserts that 'States [sic] Parties shall accord to women equality with men before the law'.

According to article 16 of the CEDAW, these state parties are recommended to take 'all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, and in particular shall ensure a basis of equality of men and women'. For example, article 16 (1c), states 'the same rights and responsibilities during marriage and at its dissolution'; and article 16 (1g) states 'the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation'. Not to mention, they are also in conflict with Law No 39/1999 concerning Human Rights, in which article 51 (1) stipulates equal rights and responsibilities in married life for both husband and wife.

It is important to eliminate discrimination against women by guaranteeing equal rights and responsibilities in married life. This is because such a stereotype (husband is the breadwinner; wife is the homemaker) has also triggered violence in the household. This is because the domestication of women has made wives economically dependent on their husbands. As a result, in the cases of violence in the household, it is hard for wives to release themselves from their abusive husbands (Komnas Perempuan 2005, 5–6).

The above role divisions between husband and wife will not become a problem if the nature of gender roles is understood appropriately, namely that a husband should not feel superior to his wife. Unfortunately, these role divisions have stereotyped men's and women's roles. As a consequence, it might be hard for a wife to work in the public arena, because her job has been determined in the domestic sphere. If a wife has an opportunity to have a career outside her home, she will face a double burden, because the homemaker role is deemed to be her destiny (Rachman, Marhumah, and Khuluq 2002, 35). This situation is the result of the patriarchal system that has been shaped by culture and the biased understanding of the Qur'an (Rachman, Marhumah, and Khuluq 2002, 41), subsequently enshrined in Indonesian family law.

Based on article 34 (2) of the Marriage Law, a wife is obliged to take care of the household to the best of her ability. The failure to do so may become a justification for a husband to submit a claim to the district court. Meanwhile, rights and responsibilities of Muslim wives

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and husbands in a marriage are qualified by the KHI. Article 80 (1) of the KHI asserts that a husband is the leader of his wife and his family. Therefore, in article 80 (4a, 4b), the husband is responsible for the maintenance, clothing, residence, household and medical expenses of his wife. Further, since he is the leader of the household, he must provide guidance and protection for his wife. He must also provide domestic needs and his wife's religious education. Meanwhile, the duties and responsibilities of a wife in the KHI include physical and mental devotion to her husband, in as much as Islamic law allows, and managing the daily activities of the household to the best of her ability. The concept of marital rights and responsibilities enshrined in Islamic marriage law in Indonesia has become inconsistent, with efforts to eliminate domestic violence. This is because the responsibilities of the wife in the KHI are associated with the concept of '*nushūz*' (disobedience), from the *fiqh* (classical Islamic Jurisprudence).

Nushūz: Physical, Psychological, and Economic Neglect

Many legal systems based on Islamic laws embed a wife's right to maintenance to her duty to obey her husband. Unfortunately, obedience is often defined in such a way as to include the husband's right to determine when, and under what circumstances, the wife may leave the marital home. Accordingly, these systems allow a husband to withhold maintenance if the wife is considered disobedient (*nushūz*) (Women Living under Muslim Law 2006, 164, 218–19). In Indonesia, according to article 84 of the KHI, if a wife does not carry out her responsibilities as mentioned in article 83 (1-2), she can be considered as *nushūz* upon the negligence of her responsibilities. In addition to this, the concept *nushūz* only applies to the wife and not to the husband. This provision discriminates against women because there are many *cerai gugat* cases in the Religious Courts that fall within the category of economic neglect, as husbands have neglected their responsibilities in the household in the form of abandoning his family by not providing for the costs of living at all. Thus, the provisions of *nushūz* are also incompatible with the aforementioned laws regarding the elimination of discrimination against women.

Moreover, the concept of *nushūz* in the *fiqh* has just been transplanted into the KHI without any further qualifications as to what constitutes a wife's obligations in the household (Hooker 2003,

123). The KHI simply stipulates that '[t]he primary obligation of a wife is to dedicate physically and spiritually to the husband *in as much The Islamic Law allows*'. The KHI does not give further explanation what it means by 'in as much The Islamic Law allows'. Thus, further explanation of this phrase is presumably acquired from the *fiqh*. The conditions of *nushūz* in the *fiqh*, in fact, have been widened, so that they might cover any attitude displeasing to a husband. It might include an irrevocable consent to sexual intercourse on the part of the wife, and the requirement to seek permission from the husband before doing certain things (Al-Zuhaili 1997, 6855). As a consequence, the claim of *nushūz* might be utilized arbitrarily by irresponsible husbands to end their marriages. Sometimes, it is also used to justify domestic violence, such as forcing the wife to please whatever and whenever the husband sexually desires (marital rape) or hitting the wife. Komnas Perempuan indeed reported that unwanted sex styles are a cause of divorce in the Religious Courts as per the 2015 Report.

Taken together with the patriarchal culture in Indonesia, the provisions of *nushūz* further suppress women into the cycle of violence in household. Many wives are often hesitant to report violence at home. Karamah, an NGO of Muslim Women Lawyers for Human Rights, noted that a wife's silence with regard to her husband's allegation of *nushūz* is often treated by the judge as proof of her negligence during litigation across jurisdictions in Southeast Asia. They are afraid that their reports will be countered by the husbands for alleging their *nushūz* and then they will be divorced (Karamah (n.d); al-Zuhaily 1997, 6855). In Indonesia, if a husband can prove that his wife was *nushūz*, the wife does not have a right to *'iddah* (waiting period) maintenance. In practice, unfortunately, some judges of the Religious Courts who handle the wife-initiated divorce (*cerai gugat*) cases have also excluded the wife's right to *'iddah* maintenance in their decisions, without examining whether the wife has been disobedient to her husband or not. Often, the wife's application for *cerai gugat* is because the conditions of the premarital agreement (*ta'līq ṭalāq*) have occurred, such as the husband has left the wife for more than two years in a row, has not provided mandatory maintenance (living costs and/or sexual intercourse) for three months, has hurt her physically, or has abandoned her for more than six months. All of these conditions actually fall within the sphere of domestic violence.

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The concept of *nushūz* has been widely criticized by feminist Muslims as an example of a biased, patriarchal understanding of Islamic tenets. According to feminist Muslims, the basic principles of the Quran (the holy book of Muslims) exemplify an egalitarian standpoint. In several verses, the Quran clearly stipulates equal status to both genders. For example, in the *al-Ḥujurāt* (13), it is written that God has created males and females of different nationalities and ethnicities, with the purpose that they acquaint themselves with each other. Another example is in the *al-Nisā'* (124), where it is written that men and women will be rewarded equally by God in the Hereafter for whatever good deeds they have conducted, as long as they have faith in God.

This equal and just relationship includes married life. For example, in the *al-Nisā'* (19), men are obliged to 'live with [their wives] on a footing of kindness and equity'. In the *al-Baqarah* (187), it is written that the relationship between husbands and wives in Islamic marriage is complementary and not domination-subordination, because '[wives] are [husband's] garments and [husband] are their garments'.

Based on the above, Asma Barlas, a contemporary feminist Muslim, argues that it is unfair to hurriedly blame Islam for discriminating against women just by referring to classical concepts of Islamic jurisprudence. This is because:

> [W]omen's status and roles in Muslim societies, as well as patriarchal structures and gender relationships, are a function of multiple factors, most of which have nothing to do with religion. The history of Western civilization should tell us that there is nothing innately Islamic about misogyny, inequality, or patriarchy. And yet, all three often are justified by Muslim states and clerics in the name of Islam (Barlas 2002, 2).

Together with other feminist Muslims, they have identified various agendas to bring about changes in favour of Muslim women. For instance, Amina Wadud, Fatima Naseef, Rifaat Hassan, Aziza al-Hibri and Shahhen Sardar Ali call for law reform through a feminist reading of the Qur`an, while Fatima Mernissi and Hidayet Tuksal locate the re-examination of the Hadith as the launching path for feminist reform (Mustafa 2012, 177–80). They maintain that the problem does not lie in Islam itself, because the fundamental value of Islam in gender relationships is egalitarian. However, this fundamental value might be distorted depending on who reads the Quran and the Hadith, and how the products of this reading are treated in Muslim societies. Thus, re-

reading the Quran and the Prophet traditions (Hadith) on gender are a necessity for contemporary Islamic law scholars in order to critically utilize doctrines of the *fiqh* related to women's issues (Alfitri 2014, 30–36). These doctrines are mainly the products of *ijtihād* (the use of individual reasoning in matters of the *fiqh*), carried out by *'ulamā'* (Islamic religious scholars) in the classical period (approximately during the 8th and 9th centuries) (Makdisi 1979, 3). This period was known as a time when traditional, patriarchal family structures prevailed in the Muslim world (Mudzhar 2003, 95–96). As mentioned above, some *fiqh* doctrines have been transplanted into family law in some Muslim countries.

The Ambiguity of Marriage Validity and Domestic Violence

Another example of a transplantation in Islamic family law relates to marriage registration. The requirement for marriage registration does not determine the validity of a marriage in Indonesia because the requirements for marriage validity in the KHI are only repetitions of the classical concepts of the *fiqh*. This situation has led to many marriages being contracted by local religious leaders, without registration (*nikah sirri*) (Mudzhar 2003, 160). The *nikah sirri* might jeopardize the status of women and children, if the marriage dissolves. This is because the husbands may deny the marriage so as to avoid providing *'iddah* (waiting period for a divorced wife) maintenance and child maintenance. The status of women and children in this case is weak, because of the lack of marriage registration. Meanwhile, the certificate of marriage is instrumental as proof for a wife's claims for maintenance in the courts (Karamah, n.d.). If the prohibition of negligence of the household in Law No 23/2004 concerning the Elimination of Violence in Household is taken into account, the possibility of *nikah sirri* in Indonesian family law might cause many wives and children to become neglected. According to Komnas Perempuan, cases of neglected wives and children from unregistered marriages are difficult to handle by legal enforcers, as there is no proof of marriage before the law (Komnas Perempuan 2016, 2).

In addition, the practice of *nikah sirri* in Indonesia has created the opportunity for polygynous marriages to be contracted without the court's permission. Along with the objective of the KHI to restrict polygynous marriage, a husband is only allowed to contract polygyny

after acquiring the permission of the Religious courts and the consent of a wife. Yet, the availability of *nikah sirri* often makes this requirement meaningless (Komnas Perempuan 2016, 2). Furthermore, polygyny that is conducted arbitrarily has caused the number of abandoned wives and children to increase in Indonesia (Mulia 2005a, 4).

During the years 2000 to 2012, there were 101 cases of domestic violence from *nikah sirri* handled by the Rifka Annisa Womens' Crisis Center in Yogyakarta (Saeroni and Andari 2013, 138). The Center notes that there are two types of *nikah sirri*, namely unregistered marriage and unregistered polygynous marriage. Both have led to three types of VAW; first, against the woman who has been married unregistered; second, against the first wife of the polygynous marriage; and third, against the woman who became the second wife, and so forth, from the unregistered polygynous marriage (Saeroni and Andari 2013, 139). Most women in this kind of marriage experienced emotional violence. Often the first wife is never asked by the husband for permission to marry another woman. The second marriage of her husband is often revealed after some time, even within the year. Most of these marriages are also preceded by an affair that occurs between the husband and the second wife, who often does not know that her future husband has a wife. Violence usually begins after the marriage is revealed by the first wife or after the victim knows that her husband has been married, or if the wife asks her husband to marry her legally (Saeroni and Andari 2013, 143). Overall more than 50% of victims experienced economic violence, especially if the victim is the first wife left behind by her husband. This confirms that in many cases of unregistered polygynous marriages, there is often an impact on women in the form of economic neglect and abandonment of the first wife, and also on family members (see table 1 case # 7 and 10). The second, third, or fourth wife also cannot escape from economic neglect. The most common form of economic neglect is the execution of a wife to work (See table 1 case # 7 and 10; Saeroni and Andari (2013, 144). Sexual violence is also more common among women victims of *nikah sirri* and *poligami sirri* (unregistered polygynous marriage). Even in some cases of *nikah sirri*, women victims and men perpetrators married off because the victims have become pregnant first, so the unregistered marriage is considered a short-term solution to solve the problems they face. These occur particularly in adolescent couples or when the women are teenagers or

students. After *nikah sirri*, however, the women have become powerless to refuse their partners sexual intercourse, so sexual violence is also prevalent. Some have even been forced to have abortions (Saeroni and Andari 2013, 145).

Concluding Remarks

The study of domestic violence in Indonesia reveals that there are many impediments for women to releasing themselves from the vicious cycle of violence in the household. Discrimination-related law for violence against women (the Indonesian Criminal Code), a patriarchal culture, biased religious understandings, as well as the legal apparatus and people's perceptions (victim blaming and victim participating), are among the major impediments that make the elimination of violence in the household difficult. The promulgation of UU PDKRT gives hope for the elimination of domestic violence in Indonesia. This is because the law comprehensively specifies the types of domestic violence and provides norms conducive to preventing the violence. However, this article reveals that the existence of the UU PDKRT alone is insufficient without it being followed by efforts to amend Indonesian family law, which still perpetuates discrimination against women.

The government has drafted a law to reform existing family law from 2004, especially Muslim marriage law in the KHI. This plan was enacted through the Ministry of Religious Affairs, which formed a team to study the KHI and come up with a new formula for Muslim marriage law called the Counter Legal Draft of KHI (CLD KHI) (Tim Pengarusutamaan Gender Departemen Agama RI 2004, 36). This effort quickly received strong objections from *'ulamā'* (Islamic religious scholars) and some academics and Muslim groups in Indonesia. The CLD KHI was accused of infringing upon the doctrines of Islam in the Quran and the Prophet traditions. In response to this rejection, the incumbent Minister of Religious Affair at the time revoked the draft from becoming Islamic marriage law in Indonesia (Alfitri 2015, 207–11).

A similar situation also happened in the effort to pass the Muslim Marriage Law in 2010. The bill was drafted by the Supreme Court and the Ministry of Religious Affairs with the involvement of *'ulamā'*, judges of the Religious Courts and women's rights groups. Given controversies created by the bill, the Parliament has not approved it to date. The bill

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was strongly opposed by Muslims, including the leaders of the two largest Islamic organizations (Muhammadiyah and Nahdlatul Ulama) and the MUI, because it contained a provision that would criminalize the practice of unregistered marriage as a felony (Alfitri 2015, 197).

The challenges against family law reformation that employ a human rights/women's rights parameter are theoretically anticipated by Islamic legal scholars (Haneef, Yunus, and Al-Fijawi 2018, 12–17; Mirza 2008, 30–31). Hence, future family law reformation projects must be undertaken with full consideration so as to avoid repudiation from Indonesian Muslims. This will require separate studies that involve a comprehensive examination of the Islamic jurisprudence of marriage (*fiqh munākaḥah*) and Islamic legal theory (*uṣūl al-fiqh*).

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تجربة الحزب الإسلامي الماليزي (PAS)

محمد عرفان حلمي وأحمد علي نور الدين

الطريقة النقشبندية الخالدية
في تشيانجور جاوه الغربية:
تعاليمها وطقوسها وتطوراتها

عبد الواحد هاشم