



Examining the Provision of Legal and Religious Education to Islamic Families to Safeguard the Rights and Well-Being of Women and Children: A Case Study Conducted in Malang Regency, East Java

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Abstract: To this present day, violence against women and children remains prevalent and shows an upward trend over the years. This phenomenon is attributed to a multitude of variables, encompassing both domestic and societal influences. The primary objective of this study is to determine the necessity of legal and religious education inside the family. In addition, it aims to investigate the consequences and potential remedies for the absence of such education in familial settings. This study employs an empirical legal methodology that combines an approach to legislation with the Islamic law. The data was collected through interviews conducted in the city of Malang, East Java and reviews of literature. The study highlights the crucial need for legal and religious education within families due to the persistently high levels of crime. The protection of women in the Islamic law extends from their pre-marital stage through marriage and even after divorce from their spouses. These rights encompass the entitlement to inherit from their parents, access to education, the right to receive love and care when they start a family, provision of bodily and spiritual nourishment, clothing, and a home or place of abode provided by their husbands. Upon divorce, a woman is entitled to receive sustenance, *iddah*, *pastau*, *mut'ah*, and acceptable clothing from her former spouse. Child protection in the Islamic law can be ensured by the provision of *nasab* (self-identity), *radha`* (breastfeeding), *hadhanah* (care and maintenance), *walayah* (guardianship), and *nafaqah* (supply of sustenance). The protection of women and children is implemented by proactive measures, such as pre-marital advising and family counseling. Repressive measures, such as issuing threats to abusers, and providing guidance and counseling to victims of violence, are also employed. Proper implementation of women's and children's rights will occur when legal and religious education is conducted within the home environment.

Keywords: Education, legal system, religious beliefs, protection of women and children, Islamic legal principles

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Abstrak: *Hingga saat ini, kekerasan terhadap perempuan dan anak masih marak terjadi dan menunjukkan tren peningkatan dari tahun ke tahun. Fenomena ini disebabkan oleh banyak variabel, yang meliputi pengaruh domestik dan sosial. Tujuan utama dari penelitian ini adalah untuk menentukan perlunya pendidikan hukum dan agama dalam keluarga. Selain itu, penelitian ini juga bertujuan untuk menyelidiki konsekuensi dan solusi potensial atas tidak adanya pendidikan tersebut dalam lingkungan keluarga. Penelitian ini menggunakan metodologi hukum empiris yang menggabungkan pendekatan perundang-undangan dengan hukum Islam. Data dikumpulkan melalui wawancara yang dilakukan di kota Malang, Jawa Timur dan tinjauan pustaka. Penelitian ini menyoroti kebutuhan penting akan pendidikan hukum dan agama dalam keluarga karena tingkat kejahatan yang terus tinggi. Perlindungan perempuan dalam hukum Islam berlaku sejak tahap pra-pernikahan hingga pernikahan dan bahkan setelah perceraian dari pasangannya. Hak-hak ini meliputi hak untuk mewarisi dari orang tua mereka, akses ke pendidikan, hak untuk menerima cinta dan perawatan ketika mereka memulai sebuah keluarga, penyediaan makanan jasmani dan rohani, pakaian, dan rumah atau tempat tinggal yang disediakan oleh suami mereka. Setelah terjadi perceraian, seorang perempuan berhak mendapatkan nafkah, iddah, mut'ah, dan sandang yang layak dari mantan suaminya. Perlindungan anak dalam hukum Islam dapat dilakukan dengan pemberian nasab (identitas diri), radha` (menyusui), hadhanah (pengasuhan dan pemeliharaan), walayah (perwalian), dan nafaqah (pemberian nafkah). Perlindungan terhadap perempuan dan anak dilakukan dengan langkah-langkah proaktif, seperti konseling pranikah dan konseling keluarga. Langkah-langkah represif, seperti mengeluarkan ancaman kepada pelaku kekerasan, dan memberikan bimbingan dan konseling kepada korban kekerasan, juga dilakukan. Pelaksanaan hak-hak perempuan dan anak yang tepat akan terjadi ketika pendidikan hukum dan agama dilakukan di lingkungan rumah.*

Katakunci: *Pendidikan, sistem hukum, kepercayaan agama, perlindungan perempuan dan anak, prinsip hukum Islam*

Introduction

Currently, the issue of gender equality appears to lack consensus or resolution, eliciting many reactions including agreement, criticism, or rejection.¹ Rejection is not limited to men; women also reject it using varied views. Upon closer examination, it becomes evident that this issue of gender is frequently

¹ Maimun Maimun, et.al., "The Development of Fiqh Munakahat in Madurese Islamic Universities and Its Relation to Gender Equality and Divorce Prevention," *al-Ihkam: Jurnal Hukum & Pranata Sosial* 15, No. 2 (2020). Kartika Yusrina, "Hakekat Perlindungan Anak Dan Perempuan Dari Kekerasan Dalam Rumah Tangga," *El-Usrah: Jurnal Hukum Keluarga* 5, no. 2 (2022), p. 2549–3132.

intertwined with the perpetration of unfairness against women and children.² Injustice generates various manifestations of aggression, harassment, and inhumane behaviors, including abuse and similar actions. The discussion surrounding violence against women and children is of great interest as it is extensively debated among practitioners, Non-Governmental Organizations (NGOs), academics, and the broader community. This discourse has gained momentum in the context of an era that increasingly prioritizes Human Rights (HAM) without adequately considering or differentiating gender issues.

Violence perpetrated against women and children constitutes a heinous act that infringes upon their fundamental human rights. Hence, it is justifiable to label acts of violence perpetrated by the United Nations (UN) against women and children as crimes against humanity.³ Violence cases pose a significant issue in Indonesia, a developing nation, as they tarnish its reputation in terms of human rights breaches, particularly those targeting women and children.⁴ Multiple forms of research exist about violence and the safeguarding of women and children. The research conducted Yusria⁵, Keumala,⁶ Fahrurrazi,⁷ Ali⁸ demonstrates that instances of violence against women and children persist in many places.

Despite the issuance of a Declaration in 1993 aimed at eliminating violence against women, incidences of violence against women and children persist and, in fact, show a tendency to increase.⁹ As of May 2023, CNN has documented a total of 457,896 instances of violence perpetrated against women

² Muhammad Iqbal Juliansyahzen, et.al., “Between Sharia, Gender, and Science in the Construction of ‘Iddah: The Response of Banyumas’ Ulemas,” *El-Mashlahah* 14, No. 1 (2024). Wulan Oktavianingsih, et.al., “Ketidakadilan Gender Terhadap Perempuan Dalam Novel Kartini Karya Abidah El Khalieqy,” *Jurnal Pendidikan dan Pembelajaran Khatulistiwa* 8, No. 3 (2019), p. 1–10.

³ Irsyad D Samad Suhaeb, “Mengartikan Kejahatan Kemanusiaan Dalam Hak Asasi Manusia Sesuai UUD 1945,” *Hak Asasi Manusia*, no. 1 (2020), p. 16. Hasyim Hasanah, “Kekerasan Terhadap Perempuan Dan Anak Dalam Rumah Tangga Perspektif Pemberitaan Media,” *SAWWA* 9, no. 1 (2013).

⁴ Rahmawati Rahmawati, et.al., “Criminal Law Disparities against Perpetrators of Sexual Violence against Children Based on Islamic Law in Indonesia,” *Istinbath: Jurnal Hukum Islam* 8, No. 2 (2023). Fathul Djannah, *Kekerasan Terhadap Istri* (Yogyakarta: LKiS, 2002), p. 1.

⁵ Kartika Yusrina, “Hakekat Perlindungan Anak Dan Perempuan Dari Kekerasan Dalam Rumah Tangga.”

⁶ Citra Dewi Keumala, et.al., “Testimonium De Auditu in The Case Rape of Childrens,” *Syariah: Jurnal Hukum dan Pemikiran* 22, No. 2 (2022).

⁷ Fahrurrazi M. Yunus and Farrah Maulina, “Tinjauan Undang-Undang Perlindungan Anak Nomor 35 Tahun 2014 Terhadap Rehabilitasi Anak Korban Napza (Studi Kasus Yayasan Pintu Hijrah Banda Aceh),” *El-Usrah: Jurnal Hukum Keluarga* 10, no. 2 (2019).

⁸ Muhammad Ali, et. al., “Mitigasi Dampak Kekerasan Terhadap Perempuan Dan Anak Di Distrik Sorong Kepulauan Kota Sorong,” *ENTITA: Jurnal Pendidikan Ilmu Pengetahuan Sosial Dan Ilmu-Ilmu Sosial* 5, no. 2 (2023), p. 215–34.

⁹ Anastasia Innutrisniyati, “Perlindungan Hukum Terhadap Perempuan Kekerasan Dalam Rumah Tangga,” *Jurnal Yustika* 14, No. 1 (2011).

and children, indicating a persistent upward trend in such occurrences. According to the Ministry of Women's Empowerment and Child Protection (KemenPPPA), there were 9,645 reported incidences of abuse and criminal acts against children in Indonesia. This event took place between January and May 28, 2023.¹⁰

Primarily, domestic violence, which refers to abuse that takes place within the home setting, accounts for the majority of incidents involving violence against children between the ages of 3 and 6. The majority of violence against children, approximately 80%, is perpetrated by their own family members. About 10% of such violence takes place in school settings, while the remaining cases involve individuals whose identities are unknown. The counseling facility of the Indonesian Child Welfare Foundation receives reports of 30 incidences of violence from victims on a monthly basis.¹¹ Approximately 60% of individuals are subjected to mild acts of violence, such as verbal abuse or insults, while the other 40% endure physical or sexual violence. Due to the perceived insignificance of these instances of violence, particularly those involving minors, only a limited number of cases are pursued.

Consequently, the need to address the alarming prevalence of violence against women and children necessitates the implementation of strategic measures to ensure their safety and well-being. Kasim, et.al., state that legal institutions in Indonesia offer protection for women and children. This includes provisions such as *'iddah* maintenance, *muṭ'ah* maintenance, joint property rights, and child custody rights for women. Additionally, children receive living expenses, guardianship from the family, and care from the mother. Thus, the law has served as a mechanism for societal regulation through legal institutions, acting as the primary component of the legal framework, which is complemented by other societal factors. This ensures equitable protection for women and children.¹²

Similarly, the safeguarding of children is achieved by the implementation of legislation pertaining to marriage. As per Firdaus and Kasim, children are granted their entitlements in the form of financial support.¹³ specifically for educational expenses and living expenses. Kamaruddin and Agustina clarified that children are safeguarded by the prohibition of granting consent for underage

¹⁰ Media Indonesia, "Kasus Kekerasan Seksual Terjadi Di Indonesia Sepanjang 2023," 2023, <https://www.metrotvnews.com/read/k8oCL0dL-4-280-kasus-kekerasan-seksual-terjadi-di-indonesia-sepanjang-2023>.

¹¹ Fajri M Kasim, et.al., "The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective," *Ahkam: Jurnal Ilmiah Syariah* 22, No. 2 (2022).

¹² Hasyim Hasanah Hasyim Hasanah, "Kekerasan Terhadap Perempuan Dan Anak Dalam Rumah Tangga Perspektif Pemberitaan Media," *SAWWA* 9, no. 1 (2013). p. 16.

¹³ Fajri M Kasim, et.al., "The Sociology of Law Perspective on Child Protection at The Syar'iyah Court in Aceh," *Gender Equality: International Journal of Child and Gender Studies* 7, No. 1 (2021). Firdaus Firdaus, et.al., "Post-Divorce Child's Nafaqah Mādiyah: An Analysis of the Shifting from Fulfilment to the Assertion of Ownership Rights," *Ahkam* 33, No. 1 (2023).

marriage,¹⁴ as it poses detrimental consequences to the child's social well-being, physical health, and future prospects. Regarding the right to employment, minors are not granted the liberty to work until they reach the legal age or adulthood.¹⁵

Hence, the presence of violence directed at women and children can be attributed to the dearth or complete absence of legal and religious instruction inside the family, particularly prior to establishing the familial unit. Rules regulating violence have indeed been established in the Indonesian legislation, yet perpetrators of violence show no hesitation in disregarding them. Increasing understanding of the intersection between law and religion is crucial for mitigating domestic violence, particularly targeting women and children. The objective of this study is to identify an optimal strategy for promptly addressing instances of violence against women and children.

This study employs an empirical legal methodology that incorporates both legislative and Islamic law perspectives.¹⁶ Data collection involved interviews and reviews of literature. The participants who were interviewed as sources of information included judges, professors, and community leaders residing in Malang City, located in the province of East Java. The literature data reviewed for this research include laws and regulations, journals, and legal books. Subsequently, all of this data is examined and evaluated through the lens of the Islamic law.

The Urgencies of Legal and Religious Education for Families

Cases of violence against women and children in Indonesia continue to be a prominent and widely discussed issue, both within the country and on a global scale.¹⁷ Despite the existence of regulatory regulations, the number of incidents continues to rise annually, with the distressing fact that the violence is perpetrated by those in close proximity to the victims. For example, instances of domestic violence occurring within a marital relationship, commonly referred to as domestic violence. Domestic violence is defined in Article 1 paragraph 1 of Law

¹⁴ Kamaruddin Kamaruddin, "The Early Marriage of The Tolaki Konawe Community in The Perspective of Critical Islamic Law," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, No. 2 (2022). Arifah Millati Agustina, "Between Culture and The Sacredness of Fiqh: The Role of Lebe in Child Marriage Practices in Brebes, Indonesia," *Journal of Islamic Law* 3, No. 2 (2022).

¹⁵ Muhamad Harun, et.al., "The Ideal Legal Protection of The Child Labor Rights In Indonesia: The Dimensions of Maqāṣid Al-Sharī'ah and The Welfare State," *Juris (Jurnal Ilmiah Syari'ah)* 23, No. 1 (2024).

¹⁶ Zainuddin Ali, *Metode Penelitian Hukum*, Jakarta: Sinar Garfika, 2015. Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif dan Empiris*, Jakarta: Prenada Media, 2018.

¹⁷ Oktavianingsih, et. al., "Ketidakadilan Gender Terhadap Perempuan Dalam Novel Kartini Karya Abidah El Khalieqy."

Number 23 of 2004 on the Elimination of Domestic Violence.¹⁸ According to this law, violence refers to any action directed towards a person, particularly women, that causes physical, sexual, or psychological harm or suffering. It also includes neglecting household responsibilities and making threats, using coercion, or unlawfully restricting someone's freedom within the household.

Marriage is a clear and established union between a man and a woman, intended to create a harmonious and enduring family life, both physically and spiritually, under the guidance of Allah the Almighty.¹⁹ The purpose of marriage is for both partners to understand and embrace their shared commitment, ensuring that their household is a safe and nurturing environment. It is crucial to recognize that the purpose of marriage does not involve causing harm to one another or engaging in domestic violence, also known as KDRT.

Domestic violence is a widespread issue that can occur in any household, regardless of cultural, religious, ethnic, or age differences between the perpetrator and victim.²⁰ It is important to note that KDRT is not solely caused by one factor, but rather stems from the complex dynamics within a family relationship.²¹ This specificity contributes to the concealment of violence perpetrated by husbands, making it challenging for law enforcement to detect such incidents. Within households, it is predominantly husbands who engage in violence against their wives and children. This is a result of the prevailing cultural norms in the Indonesian society, where husbands are considered the authoritative figurehead of the family, granting them unrestricted power within the household. Consequently, men are able to act with impunity towards women. Furthermore, women and children are expected to submit and obey the head of the family. Presently, the dynamic between husbands, wives, and children in Indonesia remains hierarchical, with husbands assuming control over all aspects of family life, while women are confined to domestic responsibilities. This cultural framework renders women and children susceptible to becoming victims of violence, as they lack agency.²²

¹⁸Pasal 1 ayat 1 “Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan KDRT” (2004).

¹⁹ “Undang-Undang No 1 Tahun 1974 Tentang Perkawinan” (n.d.).

²⁰ Guntur Gusti Nugraha, “Konsep Sosiologis Kekerasan Dalam Rumah Tangga Serta Praktiknya Dalam Kehidupan Masyarakat Indonesia,” *Jurnal Studi Gender Dan Anak* 8, no. 02 (2021), p. 195

²¹ Dadang Iskandar, “Upaya Penanggulangan Terjadinya Kekerasan Dalam Rumah Tangga,” *Yustisi* 3, no. 2 (2016).

²² Farrah Erifa Roni, “Analisis Kriminologis Kekerasan Suami Terhadap Istri Dalam Rumah Tangga,” *Badilag.Mahkamahagung*, 2022, <https://badilag.mahkamahagung.go.id/artikel>, diakses 20 April 2023.

Domestic violence is the unjust use of power by a husband against his wife, which is a violation of human rights.²³ According to Article 30 and Article 31 of the Human Rights Law, everyone has the right to feel secure and protected from fear, and they should be free from torture, punishment, cruel and inhumane treatments, and any actions that degrade their dignity and status. It is important to note that not only wives, but also children's rights are violated in such cases.

The National Commission on Violence Against Women reported the following statistics on sexual violence against women and girls: in 2014, there were 4,475 cases; in 2015, there were 6,499 cases; in 2016, there were 5,785 cases; and in 2017, there were 2,979 cases of sexual violence within domestic or personal relationships, as well as 2,670 cases in the public or community sphere. In 2019, there were a staggering 406,178 cases of violence against women. The 2019 report also highlighted new findings regarding violence against women, including marital rape, incest, dating violence (KDP), cybercrime, and sexual violence against women with disabilities. It is worth noting that while some of these cases may be older, the types of violence are becoming increasingly diverse.²⁴

The domestic violence is explicitly prohibited due to its detrimental impact on the *sakinah*, or harmony, that is the essence of a marriage.²⁵ Various forms of violence against women and children can be categorized as follows: (1) Physical violence, such as being struck with a hand or spoon, being forcefully restrained, choked, or subjected to hair-pulling or head-banging against a wall; (2) Psychological violence, including threats, verbal abuse, disregard for the victim's opinions, social isolation, and demeaning remarks that undermine the status of women; (3) Economic violence, which involves placing the entire burden of household expenses on women (particularly those who work formally) or failing to provide financial support, thereby neglecting the needs of the household.²⁶

As societal norms evolve and public awareness of human rights increases, there are additional actions that can be classified as domestic violence perpetrated by husbands against their wives. Firstly, the husband imposes a limitation on the wife's freedom of expression, namely by forbidding her from wearing a specific dress that she desires. Furthermore, inhibiting the wife's ability to realize her own capabilities, such as a husband who prohibits his wife from engaging in

²³ Eni Purwaningsih, "Faktor-Faktor Penyebab Terjadinya Kekerasan Terhadap Perempuan Dalam Rumah Tangga (Studi Di Polres Mataram)" (Universitas Brawijaya, 2019).

²⁴ Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, "Kekerasan Terhadap Perempuan dan Anak," 2020, <https://e-learningtppo.kemennppa.go.id/pluginfile>, Accessed 20 April 2023.

²⁵ Samsul Samsul and Mohd. Fauzi Abu Husen, "The Empowerment of The Council of Advising and Preservation of Marriage (BP4) in Building Sakinah Families," *Justicia Islamica* 17, no. 2 (2020), p. 281.

²⁶ Anastasia Innutrisniyati, "Perlindungan Hukum Terhadap Perempuan Kekerasan."

employment. Furthermore, it is not unusual to observe in society instances where husbands restrict their wives from engaging with individuals that the wife disapproves of, to the extent that the husband may even instruct the wife to discontinue relationship with her acquaintances. Furthermore, the husband engages in infidelity by inviting other women into their marriage life. Furthermore, there are instances of financial exploitation perpetrated by the husband, such as recklessly spending funds that are intended for the essential requirements of his family members or neglecting his responsibility to provide for his household.

There are several factors that underlie violence against women and children, these factors include; (1) Women's economic independence. Typically, women's reliance on males can contribute to violence, although this is not universally true since women's autonomy can also result in violence inflicted upon them by men. (2) Women labor. Women who engage in employment outside of their homes may be at an increased risk of experiencing violence, particularly due to male infidelity. (3) Male infidelity and remarriage with other women can lead to violence against women. Another factor that might contribute to violence against women is (4) interference from third parties. Family members, particularly mothers-in-law, might interfere and contribute to men's tendency to conduct violence against women. (5) A lack of comprehension of religious beliefs can also be a factor leading to violence against women. Erroneous interpretation of religious doctrines can lead to domestic violence against women. (6) Male behaviors, when men engage in repeated acts of violence against women, it normalizes such behavior.²⁷

Furthermore, there are underlying factors contributing to domestic violence, particularly against women and children, which stem from a lack of education regarding law and religion as a solid basis for appropriate actions and behaviors. Despite the existence of laws addressing this issue, it appears that they have not effectively deterred perpetrators from engaging in violent behavior.

Isroqunnajah, the Syuriah Nahdlatul Ulama Malang, believes that it is essential to provide children with both legal and religious education from a young age. Failing to do so will have negative consequences for parents, as the behavior and character of children are shaped by their upbringing. Consequently, if children are not properly taught these values during their formative years, they may mistreat their own children or women when they become adults.²⁸

According to Khoirul Anam, a lecturer at the Faculty of Sharia UIN Malang, religious and legal education is important for promoting legal awareness in the society. This is because religious and legal education not only focuses on cognitive aspects, but also emphasizes the philosophy of education itself, which

²⁷ Fathul Djannah, *Kekerasan Terhadap Istri*, p.10

²⁸ Interview with Isroqunnajah, Syuriah Nahdlatul Ulama the city of Malang, April 15, 2024.

plays a crucial role in shaping individuals' understanding of religion and law in their daily lives.²⁹ Therefore, the role of parents in imparting legal and religious education to their children is highly significant.

Ensuring the Safety and Well-Being of Women and Children According to the Islamic Law

Allah SWT has created humanity on Earth with two distinct genders, namely women and men. The Qur'an contains several verses that elucidate the shared origin and purpose of women and men in life. Allah SWT created humans to serve as caliphs on Earth, and this responsibility is not exclusive to men; women also have a significant role to play. Therefore, both genders bear the weighty responsibility of safeguarding the Earth from harm.

Men and women are the genders given by Allah SWT to the inhabitants of this earth. The existence of differences in male and female sexes has consequences in terms of differences in sex and its function. Men have reproductive organs such as penis, sperm sac and sperm. While women have differences in the vagina, ovaries, egg cells, uterus and prolactin hormone. Different genitals in men and women make both have very different reproductive experiences. In men, they experience wet dreams and women experience menstruation and pregnancy, then give birth, then postpartum and after that breastfeeding. Wet dreams are experienced by men within 5 minutes, but for women they experience them every month (menstruation) and after marriage they experience 2 years and 9 months (pregnancy, childbirth and breastfeeding).

Therefore, the differences that occur are only related to the type and function of sex. Furthermore, men and women in the public and domestic spheres have the same rights and obligations. If women have obligations in household matters and child care, then men also have the same role. Differences in biological experiences in women should be considered for existing regulations. Emphasizing attention to women who are experiencing biological experiences is important as an effort to realize true justice. True justice is a form of justice given to men or women according to their respective needs, which do not have to be the same. True justice can be realized by paying attention to two things, namely whether the biological experience felt by women is not painful? And in the assumption of goodness, can women be assured of not experiencing five social experiences (stigmatization, marginalization, subordination, violence and double burden).³⁰ This has actually been stated in existing laws and regulations.

²⁹ Interview with Khoirul Anam, the lecturer at Universitas Islam Negeri Malang, April 16, 2024.

³⁰ Junaivan Alamona, "Marginalisasi Gender Dalam Pengambilan Keputusan (Studi Kualitatif Kaum Perempuan Di Lembaga Legislatif Kota Manado)," *Holistik* 10, no. 20 (2017), p. 1.

The Islamic law ensures that women are granted various rights throughout their lives, encompassing the period before marriage, during marriage, and even after divorce. These rights encompass inheritance from their parents, access to education, and the entitlement to receive emotional, physical, and spiritual support, as well as clothing and housing from their husbands when they have a family. In the event of divorce, women have the right to receive financial supports, known as sustenance, as well as other provisions such as *iddah*, *pastau*, and *mut'ah*, and even reasonable clothing from their former husbands.³¹ These legal provisions aim to protect women by ensuring the fulfillment of their rights.

Protection for women and children is not only governed by laws and regulations, but it is also regulated in the Islamic law. According to Islamic teachings, children hold a unique position as they are considered a trust from Allah to parents, society, nation, and state. They are seen as heirs to the teachings of Islam, which are believed to bring prosperity to the world as *rahmatan lil alamin*.³²

In Surah an-Nisa verse 9, Allah SWT emphasizes the importance of parents ensuring the well-being of their future generations. 'Let the guardians be as concerned 'for the orphans' as they would if they were to 'die and' leave 'their own' helpless children behind. So let them be mindful of Allah and speak equitably'. This verse highlights the need for parents to raise mentally and spiritually resilient individuals who can effectively tackle life's challenges. Parents serve as role models for their children and should demonstrate exemplary behavior in all aspects of life. It is crucial to instill spiritual values from an early age and reinforce them through consistent practices.

According to Wahbah al-Zuhaili, children's rights encompass five essential aspects: (1) *nasab* (personal identity-lineage); (2) *radha`* (breastfeeding); (3) *hadhanah* (care and maintenance); (4) *walayah* (guardianship); and (5) *nafaqah* (provision of sustenance). *Hadhanah*, which includes care, maintenance, and protection, is one of the ways to safeguard children, in addition to ensuring their identity, breastfeeding, guardianship, and provision of sustenance. This form of child protection is tailored to the child's developmental stage. Furthermore, Wahbah al-Zuhaili emphasizes that the implementation of *walayah* occurs after the *hadhanah* phase.³³

Currently, families who have resilience are needed to filter all forms of negative influences that can endanger the future of children. Various problems among the younger generation occur because of the weak defense of the family.

³¹ Abidin Nurdin, "Mut'ah and Iddah: Post-divorce Payment Practices in Aceh," in John R. Bowen and Arskal Salim, *Women and Property Rights in Indonesian Islamic Legal Contexts*, (2018).

³² Andi Hakim Lubis Muazzul, "Perlindungan Anak Prespektif Hukum Islam," *Journal of Gender and Social Inclusion In Muslim Societies* 2, no. 1 (2021).

³³ Wahbah al-Zuhaili, *Al-Fiqh Al-Islamiy Wa Adillatuh*, Juz. 10, (Beirut: Dar al-Fikr, n.d.).

Children become victims of broken homes, divorce of both parents, lack of religious education, lack of parental attention and others. Even until now the vulnerability of women and children as objects of violence seems to have not been resolved. Various aspects such as legal, economic, and social aspects of the society do not support the resolution of this problem, and they still position women and children at the lowest level. Therefore, case management efforts to realize this protection of women and children is one of the systematic and strategic steps to achieve this goal of building protection arrangements for the welfare of women and children.³⁴

In the study of Islamic law, it does not specifically discuss child protection, but the discussion of fiqh focuses on the care of children, which is known as the term "*hadhanah*" which means caring for and educating someone who is not yet *mumayyiz* or who has lost their intelligence because they cannot fulfill their needs.³⁵ Because there are several principles of nature in child protection, among them first, a child cannot possibly fight alone. The role of children as assets and also the successors of the future of the nation and religion, it is very necessary to protect their souls and dreams. However, children cannot protect themselves and their rights individually, so that families, communities and the state have the right to maintain the quantity and quality of Indonesian children. The concept of *hifz nasl*, then children will become leaders of a country, so from now on they must be trained and their spirit and principles of life must be maintained. Second, Interests best for children by providing children with protection one of the principles states the best interests of children by prioritizing them in every decision concerning children, because we do not want children to become victims later. Third, Cross-Sectoral, because child protection is a struggle that requires cooperation and attention from across sectors in all elements of society.³⁶

Islamic jurisprudence scholars agree that the law of caring for and educating children is obligatory because if children who are still young are not *mumayyiz*, are not cared for and educated properly, it will have bad consequences for them. It can even lead to the loss of their lives. Therefore, they must be well cared for and educated. There are several areas in child protection that still require improvement in terms of cultural understanding and provision of appropriate facilities. It is important to recognize that each child has unique needs, and sometimes families and communities fail to meet these needs adequately. As

³⁴ Kutbuddin Aibak, "Implementation of Maqāsid Shari'ah in Reform of Case Management of Violence against Women and Children," *De Jure: Jurnal Hukum Dan Syari'ah* 15, no. 1 (2023), p. 82–98.

³⁵ Sayyid Sabiq, *Fiqh Sunnah, Translation by Abu Syauqina & Abu Aulia Rahma* (Jakarta: Tinta Abadi Gemilang, 2013).

³⁶ Kartika Yusrina, "Hakekat Perlindungan Anak dan Perempuan dari Kekerasan Dalam Rumah Tangga."

someone responsible for child protection, it is crucial to prioritize the well-being of children, as they are valuable assets to the state. Furthermore, children play a significant role in shaping the social and political landscape of a nation, and they serve as a reflection of the nation's overall condition.³⁷ If a nation has a high number of malnourished children, it indicates a failure in fulfilling its duty as a protector. Conversely, if a country has a population of intelligent, well-educated, and healthy children, it is considered successful in achieving fundamental humanitarian goals.

The duty to safeguard applies universally and at all times, irrespective of the parents' socioeconomic status or vital status. In Islamic jurisprudence, if parents are unable to fulfill their parental duties, the responsibility automatically transfers to their guardians. The principle of child protection, as a means of fulfilling both tangible and intangible rights, holds paramount significance. The intangible aspect of child protection, known as *hadhanah*, places absolute accountability on parents or guardians for the children under their care. This sense of responsibility encompasses the fulfillment of the duty to safeguard, nurture, and provide emotional support to children holistically.³⁸

The Consequences and Remedies for the Absence of Legal and Religious Education for Families

Education is a deliberate and conscious endeavor to enhance one's development in all areas of life. It is an integral part of everyone's life and aims to bring about behavioral changes in individuals and groups, ultimately helping them attain maturity through teaching and training.³⁹ The primary source of education is the family environment, which includes character education influenced by religion and societal laws.

The prevalence of violence against women and children is on the rise, driven by the advancements of the modern era and the widespread access to technology. This is a pressing issue that needs to be addressed. It is crucial for parents and immediate family members to instill a comprehensive understanding of religion and law in young children, as this will significantly impact their future development.⁴⁰ By providing legal and character education aligned with their religious beliefs from an early age, children can develop critical thinking skills in their physical, intellectual, and social growth, which is particularly rapid during

³⁷ M. Hasbi Umar And Bahrul Ma'ani, "Urgensi Hak Dan Perlindungan Anak Dalam Prespektif Maqashid Al-Syari'ah," *Al-Risalah* 17, no. 2 (2017), p. 202.

³⁸ Fakhruddin M. Yunus and Farrah Maulina, "Tinjauan Undang-Undang Perlindungan Anak Nomor 35 Tahun 2014."

³⁹ Jito Subianto, "Peran Keluarga, Sekolah Dan Masyarakat Dalam Pembentukan Karakter Berkualitas," *Edukasia*, no. 2 (2013), p. 332.

⁴⁰ Muhammad Shobih Itmam, "Urgensi Pendidikan Hukum Bagi Anak Usia Dini," *International Collaboration Conference on Law Syariah and Society (ICCOLASS)* 1 (2022), p. 37.

this stage of life. Therefore, learning and education, both in terms of character and environment, play a significant role in shaping their development at this crucial age.

Religion is one of the most important factors in the family, the existence of beliefs and family guidelines is a strong foundation in establishing marriage, the current phenomenon that often occurs is early marriage in various regions in Indonesia, especially rural communities. Early marriage is a phenomenon that is closely related to the socio-cultural and religious values that apply in the society. In the Indonesian context, marriage tends to be viewed as a social obligation rather than as an expression of individual free will. In general, it can be assumed that in a society with a traditional relationship pattern, marriage is considered a "social necessity" that is part of the tradition and is considered sacred. On the other hand, in a rational modern society, marriage is considered more of a social contract, so that marriage is often seen as a choice. This traditional view of marriage as a social obligation seems to have a significant role in the phenomenon of early marriage that occurs in Indonesia.⁴¹ The lack of education on the meaning of marriage and building a family becomes a very fatal interpretation when only partially understood. The result is a lot of divorce, violence against women where there is a lack of religious education in the family environment.

Differences in roles between women and men can be caused by biological or gender differences. The theory of "nurture" or environmental education sees these differences as the result of cultural and societal constructions that provide the view that men are superior to women. The lack of women's biological structure causes them to be placed in a marginal position in the society. Women are often considered to have lower physical strength, are weaker, and more emotional, so they are considered only suitable for soft work such as household chores, caring for children, and so on. Social relationships are also often based on the size of men, so women are considered to have no right to carry out such relationships. As a result of these differences, women are often left behind in their roles and contributions to family life, society, nation, and state. Social construction places women and men at different social values.

This gender construction has existed and formed for centuries, forming a culture that is passed down from one generation to the next. Social learning theory explains that our behavior is greatly influenced by interactions with others. This theory argues that sexual behavior, for example, can be learned without having to experience it directly, but through observing other people and other events. For example, if we see someone being punished for having premarital sex, we are likely to avoid doing the same behavior because of the influence of that observation. In the context of sexual assault in general, this theory highlights

⁴¹ Faridatul Jannah and Umi Sumbula, "Pernikahan Dini dan Implikasi Terhadap Kehidupan Keluarga pada Masyarakat Madura (Perspektif Hukum dan Gender)," *Egalita* 1 (2012), p. 86.

important factors from past experiences, such as upbringing, social norms, biological events, and how previous sexual experiences shape how we think and act sexually.⁴²

Religious education is also not enough when we are faced with many problems in the family, so there is a need for legal awareness. Legal awareness refers to the awareness of individuals or groups of people regarding the rules or laws that apply. It is important for a family to have a high level of legal awareness, because it aims to achieve order, peace, tranquility, and justice in relationships between people. Without an adequate level of legal awareness, this goal will be difficult to achieve. The impact of a lack of legal awareness is that it causes discomfort and insecurity in family and community life. Therefore, it is important for us to develop an attitude of legal awareness. Isroqunnajah also mentioned that legal awareness does not just come, but needs to be formed, the proverb says that a child is like a Javanese person who is not far from his parents so, Javanese Buddhism says that if a person dies, the child is like a pole, so how is his child, that how his parents are and because of that, if parents want their children to be good, they must be able to be good first and teach goodness to their children.⁴³

Legal awareness education should commence at an early stage, particularly within the family setting. Each member of the family should undergo training to comprehend their rights and obligations towards the family, as well as to respect the rights of other family members. By instilling legal awareness within the family, individuals will become more adept at applying it in broader contexts, including the community and even the state.

Soerjono Soekanto outlines several specific guidelines for legal awareness, referred to as indicators. The first indicator is legal knowledge, which entails understanding that certain behaviors are governed by written or unwritten laws. These behaviors encompass actions that are either prohibited or permitted by law. The second indicator is legal understanding, which involves having knowledge and comprehension of specific rules. For instance, individuals comprehend the nature and significance of Law Number 1 of 1974 regarding Marriage. The third indicator is legal attitude, which pertains to a person's inclination to evaluate the law. This encompasses an individual's perspectives or opinions on the law. The fourth indicator is legal behavior, where individuals or society as a whole adhere to applicable regulations. This encompasses tangible actions taken by individuals or groups to comply with existing laws.

Religious and legal education within the family setting exert a substantial influence, necessitating our proactive preparation in terms of mental and material readiness before embarking on starting a family. It is crucial to possess a

⁴² Elizabeth Rice and Albert Richard Allgeier. Allgeier, "Sexual Interaction.," *Toronto: DC Health and Company* 3 (1991), p. 84–88.

⁴³ Interview with Isroqunnajah, Syuriah Nahdlatul Ulama, the city of Malang, April 16, 2024.

heightened awareness of the significance of education, enabling us to impart knowledge to our children and serve as exemplary role models in terms of ethics and social behavior

According to data acquired from the Religious Court in Malang Regency between 2021 and 2022, there were a total of 7,506 divorce cases, out of which 1,431 were filed due to instances of domestic violence.⁴⁴ Mr. Izzudin, a mediator judge at the Malang Regency Religious Court, further revealed that he had mediated a total of 476 divorce cases related to domestic violence during the same period.⁴⁵ These figures indicate a persistently high prevalence of violence against women and children in Malang Regency.

Following up on this, after seeing the phenomenon that exists in the condition of families in Indonesia, in the authors' opinion, preventive measures are needed to suppress and eradicate reprehensible acts, namely violence committed especially against women and children when the repressive attitude taken by the government in the form of laws and regulations is not heeded in doing something. The preventive steps that can be taken by the government are to promote legal and religious education for families in Indonesia.

Legal and theological education is crucial, particularly when provided before to the prospective bride and groom performing the *ijab qabul*. The purpose of this is to ensure that the potential bride and groom fully comprehend the legal rights, obligations, and responsibilities they will assume upon becoming a family. It is crucial to have a precise and unambiguous understanding of the consequences that will follow if these obligations are neglected or violated. The key aspect is that the eradication of violence against women and children is attainable. Essentially, individuals enter into marriage with the expectation of attaining happiness, serenity, and calmness. A man who decides to marry a woman anticipates finding solace and contentment in their relationship, feeling at ease to express love and affection (*mawaddah warahmah*), and effortlessly experiencing joy while navigating life in this world.⁴⁶

According to Aunur Rofiq, the Muhammadiyah Malang Administrator, both legal and religious education within the family is crucial. Legal education instills an understanding of the significance of obedience, order, justice, and human rights. Similarly, religious education serves a similar purpose. However, religion offers a more profound and enduring sense of awareness as it pertains to the connection between individuals and their God, devotion in worldly existence,

⁴⁴ Interview with Widodo, the mediator judge at the city of Malang Religious Court, 12 July, 2023.

⁴⁵ Interview with Izzudin Hakim, the judge at the city of Malang Religious Court, 12 July 2023.

⁴⁶ Jayusman and Hervianis Virnya Jaya, "The Development of Indonesian Marriage Law in Jakarta Governor Regulation No. 185 of 2017," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 2 (2021), p. 827.

and consciousness of the eternal afterlife. Taking preventive measures is necessary to establish a stronghold in navigating life.⁴⁷

The author proposes many methods to address the issue of violence against women and children in present-day Indonesia, encompassing both preventive and repressive measures. The suggested procedures are as follows:

1. Preventive actions/solutions

a. Pre-marital counseling

The Ministry of Religious Affairs organizes pre-marital counsel sessions for couples who are about to be married. The purpose of these sessions is to educate the prospective brides and grooms on the necessary knowledge and skills required to effectively manage a household.

b. Family counseling provided by the KUA

Family counseling aims to enhance the development and resolution of problems within a family by improving communication among family members.⁴⁸ It is conducted at the KUA in order to reduce the prevalence of divorce.

c. Imposition of criminal sanctions for individuals who commit acts of domestic violence

The imposition of criminal penalties is intended to discourage and prevent members of the community from engaging in activities that carry the risk of criminal consequences.

d. The government offers education to law enforcement officers, particularly those involved in domestic violence cases. This education is necessary to ensure that these officers have the necessary understanding and mindset to safeguard victims and prioritize their rights, particularly their protection throughout the case proceedings.

e. Educating women who are victims of domestic violence on appropriate courses of action, reporting procedures, and methods of obtaining protection.

f. Educating the community to foster greater awareness and responsiveness towards instances of domestic abuse within their surroundings, so enabling them to assist victims in reporting their cases to the relevant authorities.

g. The government ensures equal access to education for all citizens, providing obligatory education to enable them to compete in the workforce and enhance the overall welfare of the community.

⁴⁷ Interview with Aunur Rofiq, the executive member of Muhammadiyah Kota Malang, April 16, 2024.

⁴⁸ Sofyan S. Willis, *Konseling Keluarga (Family Counseling)* (Bandung: Alfabeta, 2008). p.83

2. Repressive actions

As the government has implemented several regulations, including Law of the Republic of Indonesia Number 23 of 2004, to address domestic violence, it is crucial to ensure that the prescribed punishments for offenders are enforced in accordance with the law:

- a. Enforcing punitive measures against individuals who commit acts of domestic abuse based on the nature and intensity of the harm perpetrated.
- b. Offering counseling to the perpetrator to help them comprehend that their behaviors amount to domestic abuse and to prevent them from repeating such behavior in the future.
- c. Offering comprehensive support and safeguarding to the victim to ensure their confidence in the justifiable punishment of the perpetrator and to alleviate concerns about tarnishing the family reputation while reporting the perpetrator's activities.
- d. Administering psychological counseling to the victim to address the emotional distress experienced as a result of the abuse inflicted by her husband.

Conclusion

Seeing so many cases of violence that occur in Indonesia today, preventive and repressive measures must be taken, in addition to repressive measures in the form of legislation, preventive measures must also be implemented by providing strong legal and religious education to every person who will get married, because most cases of violence are found in households. Likewise, children must be given strong educational provisions from an early age so that their behavior is directed. With that, it is hoped that the number of cases of violence against women and children in Indonesia can be minimized. Protection of women in the Islamic law is carried out from before prior to marriage until they get married and even after they divorce their husbands. These rights include, inheritance from their parents, the right to education, when they have a family, they have the right to receive affection and attention, physical and spiritual sustenance, clothing, a house or residence from their husbands. When they get divorced, a woman has the right to receive sustenance; *iddah*, *pastau*, *mut'ah*, even reasonable clothing from her ex-husband. Meanwhile, child protection in Islamic law can be done by providing *nasab* (self-identity); *radha'* (breastfeeding); *hadhanah* (nursing and care); *walayah* (guardianship); and *nafaqah* (provision of livelihood). Protection of women and children is carried out in a preventive manner such as; pre-marital guidance, family counseling guidance while repressive handling, for example; threats to perpetrators, guidance and counseling for victims of violence. All of these women's and children's rights will be implemented well when the process of legal and religious education is carried out in the family. So that in the family

there is an awareness of the fulfillment of women's and children's rights in a fair and dignified manner.

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