

ANALYSIS OF THE ROLE OF LAW IN ADDRESSING GENDER-BASED VIOLENCE FROM THE PERSPECTIVE OF HUMAN RIGHTS IN ISLAMIC POLITICS

Dela Az Zahara¹, Gustiya Sunarti²

¹Universitas Islam Negeri Fatmawati Sukarno Bengkulu, Indonesia. E-mail: delaazzahara488@gmail.com

² Universitas Islam Negeri Fatmawati Sukarno Bengkulu, Indonesia. E-mail: Sunarti.gustiya@gmail.com

Abstrak

Gender-based violence (GBV) is a serious issue that violates human rights and is often neglected in legal contexts. This study aims to analyze the role of law in addressing GBV from a human rights (HR) perspective within the framework of Islamic politics. Using a qualitative approach, this article explores how Islamic legal principles—which emphasize the protection and respect of women—can be implemented to reduce gender-based violence. Islamic law, through the concepts of *qisās* (retaliation) and *ḥudūd* (fixed punishments), provides a framework for sanctioning perpetrators of sexual crimes and violence; however, its implementation is often hindered by social and cultural factors. This study also highlights the importance of strong evidence and a fair legal process in ensuring justice for victims. Accordingly, the article recommends legal reform and increased public awareness to support more effective law enforcement in addressing GBV and protecting women's rights in Indonesia.

Keywords: Legal Role, Gender-Based Violence, Human Rights, Islamic Politics

INTRODUCTION

Gender equality is an essential component of the concept of human rights. Equal rights for men and women are a fundamental principle of the United Nations Charter, adopted by world leaders in 1945. The term "human" in Human Rights refers to humanity as a whole. Human rights are women's rights, and women's rights are human rights—once and for all. Upholding and maintaining gender equality between men and women requires the active involvement of the government. For example, Article 27, Paragraph 1 of the 1945 Constitution of the Republic of Indonesia affirms the principle of equality for all citizens without exception, thereby eliminating discrimination.¹

Human rights are the fundamental rights inherent to every individual from birth. The concept of human rights emerged in Europe during the 17th and 18th centuries as a response to the feudalism of the aristocracy and the absolute and oppressive rule of monarchs over the people, particularly those from lower social classes. As a reaction to such tyranny, the idea of upholding human rights arose, emphasizing that all human beings are equal.²

¹ Dhea Januastasya Audina, "Kesetaraan Gender Dalam Perspektif Hak Asasi Manusia," *Nomos : Jurnal Penelitian Ilmu Hukum* 2, no. 4 (2022): 148–54, <https://doi.org/10.56393/nomos.v1i6.602>.

Gender-based violence (GBV) is a form of violence directed at individuals based on their sex, often rooted in deep-seated gender inequality within society. In many cases, GBV reflects social norms that discriminate against women and other vulnerable groups. Therefore, addressing GBV requires a comprehensive legal approach to ensure protection and justice for victims. From an Islamic perspective, human rights have a strong theological foundation. Islamic teachings emphasize that every individual possesses fundamental rights that must be respected and protected. The concept of human rights in Islam is theocentric, meaning these rights are considered divine gifts from Allah SWT that must be safeguarded by both society and the state.⁴

METHOD

The research method used in this study is a qualitative approach, specifically employing library research. This method involves analyzing theories relevant to the research problem. Library research is a data collection technique that involves reviewing books, scholarly literature, notes, and reports related to the issue being studied. In writing this article, the author utilized library research by collecting data through an in-depth examination of books and journal articles related to the role of education in shaping character.

The data collection tools used in this academic work include observation studies, along with standard data collection methods typically used in library research. These tools involve gathering data from both primary and secondary sources. Primary sources refer to documents that contain scientific knowledge or established facts and ideas, such as books, journal articles, and other academic materials. Secondary sources are documents that provide information about reference materials, such as bibliographies and other supporting resources.

RESEARCH RESULTS

Women who come into contact with the law often continue to face numerous challenges—whether as victims, witnesses, or even as perpetrators. Yet, the state has an obligation to ensure that women receive justice and are free from all forms of discrimination within the judicial system. Unfortunately, women frequently do not receive such treatment at every stage of the legal process.

The research findings indicate that despite the existence of various regulations designed to protect women, significant challenges remain in their implementation. One important step has been the adoption of Supreme Court Regulation No. 3 of 2017, which provides guidelines for judges in handling cases involving women. However, many women continue to face difficulties in accessing justice, often becoming entangled in lengthy and exhausting legal processes. Moreover, although Law No. 23 of 2004 on the Elimination of Domestic Violence has been enacted, a gap persists between expectations and on-the-ground realities, with many communities still lacking a full understanding and proper implementation of the law. The study also reveals that Indonesian law often fails to provide adequate protection for women, as exemplified by the Criminal Code (KUHP), which has yet to explicitly recognize gender-based violence.

² Masfi Sya'fiatul Ummah, "Hak Asasi Manusia Dalam Perspektif Islam," *Sustainability (Switzerland)* 11, no. 1 (2019): 1–14.

³ <https://bullyid.org/educational-resources/kekerasan-berbasis-gender-definisi-dan-jenis-jenisnya/>

⁴ Ummah, "Hak Asasi Manusia Dalam Perspektif Islam." "Hak Asasi Manusia Dalam Perspektif Islam," *Sustainability (Switzerland)* 11, no. 1 (2019): 1–14.

In the context of Islamic politics, the handling of gender-based violence (GBV) is often influenced by cultural and religious norms that may reinforce discrimination against women. Although there have been efforts to raise awareness about women's rights, many political parties still treat women as instruments to achieve political goals. Therefore, further efforts are needed to educate the public on women's rights and the importance of legal protection, as well as to revise existing regulations to be more responsive to women's needs. The integration of a gender perspective into all public policies and law enforcement measures is also essential to ensure that women's rights are comprehensively protected. This study emphasizes that, despite progress in legal regulations aimed at protecting women from gender-based violence, implementation challenges and systemic discrimination must still be addressed in order to achieve genuine justice.

DISCUSSION

The Concept of Gender-Based Violence

Gender-Based Violence (GBV) refers to acts of violence that occur as a result of gender inequality and are often directed at individuals based on their sex or gender identity. According to UNHCR, GBV includes various forms of violence that result in physical, mental, or sexual suffering, as well as threats of such acts, coercion, and the deprivation of individual liberty. GBV is rooted in harmful social norms and the abuse of power that sustain gender inequality, often perpetuating the subordination of women in patriarchal societies.⁵

Gender-Based Violence (GBV) is influenced by various interconnected social, cultural, and economic factors. From a social perspective, deep-rooted gender inequality within society often creates an environment in which GBV can occur. For example, dominant patriarchal norms can lead to the social acceptance of violence as a means of controlling women. In many communities, there is a strong stigma attached to victims of violence, which discourages them from reporting the abuse they experience—ultimately reinforcing the cycle of violence.⁶

From a cultural perspective, traditional practices and societal norms also contribute to the occurrence of gender-based violence (GBV). For instance, practices such as forced marriage and female genital mutilation are often regarded as cultural or traditional obligations, despite their harmful impact on women and children. Additionally, the portrayal of women in media and popular culture—often degrading or normalizing sexual violence—can reinforce permissive attitudes toward GBV. Economic factors also play a significant role in the perpetuation of GBV. Economic instability can increase women's dependence on their partners or other family members, making them more vulnerable to violence. In situations where women lack access to economic resources or education, they are more likely to remain in abusive relationships due to limited options for independence. Research indicates that in many cases, economic violence—such as financial neglect or control over resources—is one of the most common forms of GBV.

⁵ <https://pkbi-diy.info/kekerasan-berbasis-gender-kbg/>, Sen. Nov 18th, 2024

⁶ Yuniati Ningsih, Karina Salsa Fitria, and Muhammad Risky Arisandi, "Upaya UNHCR Dalam Mencegah Terjadinya Sexual Gender Based Violence Terhadap Pengungsi Perempuan Di Indonesia," *Aufklarung: Jurnal Pendidikan, Sosial, Dan Humaniora* 2, no. 3 (2022): 276–83, <http://pijarpemikiran.com/index.php/Aufklarung>.

Implementation of Laws and Challenges of Gender-Based Violence

Overall, to effectively address Gender-Based Violence (GBV), a holistic approach that considers social, cultural, and economic factors is necessary. Prevention and response efforts should involve community education on gender equality, changing harmful cultural norms, and economic empowerment for women so that they have a stronger position in society.

The Domestic Violence Law (UU PKDRT) has several main objectives, including preventing domestic violence, protecting victims, prosecuting perpetrators, and maintaining the harmony of the family. Article 2 of this law affirms that all parties within the household—such as husbands, wives, children, and other family members—are protected by this legislation.⁷ The forms of violence regulated in the Domestic Violence Law (UU PKDRT) include physical violence (Article 6), psychological violence (Article 7), sexual violence (Article 8), and neglect (Article 9). Additionally, this law grants rights to victims, such as the right to obtain protection from authorities and access to healthcare services according to medical needs (Article 10). Sanctions for perpetrators of violence are outlined in Chapter VIII, where penalties can include imprisonment for up to 20 years, depending on the severity of the acts committed. Although the UU PKDRT has been in place for over a decade, various challenges remain in its implementation.⁸ The government also bears the responsibility to prevent violence through gender-sensitive policies and educational programs. Overall, Law No. 23 of 2004 serves as a crucial legal foundation in efforts to address domestic violence and protect women's rights in Indonesia, though challenges in its implementation still require serious attention from all relevant parties.

Furthermore, Supreme Court Regulation No. 3 of 2017 concerning Guidelines for Adjudicating Cases Involving Women The government also bears the responsibility to prevent violence through gender-sensitive policies and educational programs. Overall, Law No. 23 of 2004 serves as a crucial legal foundation in efforts to address domestic violence and protect women's rights in Indonesia, though challenges in its implementation still require serious attention from all relevant parties.

Furthermore, Supreme Court Regulation No. 3 of 2017 concerning Guidelines for Adjudicating Cases Involving Women in Conflict with the Law (PERMA No. 3/2017) represents an important step in efforts to combat discrimination and gender stereotypes within the Indonesian judicial system. in Conflict with the Law (PERMA No. 3/2017)⁹ represents an important step in efforts to combat discrimination and gender stereotypes within the Indonesian judicial system. PERMA No. 3/2017 aims to ensure that women involved in the legal process—whether as perpetrators, victims, or witnesses—receive fair and equal treatment. One of the main focuses of this regulation is to eliminate all forms of discrimination that may occur during the judicial process, emphasizing the importance of understanding and applying gender equality principles by judges and other judicial officers.

⁷ Ahmad Yunus and Universitas Ibrahimy, “Dalam Rumah Tangga (Perspektif Uu Pkdr Dan Uu Perlindungan Anak)” 1, no. 4 (2021): 1–16, <https://journal.amikveteran.ac.id/index.php/Khatulistiwa/article/download/505/411/1829>.

⁸ Yunita Adinda, Wulandari, and Yusuf Saefudin, “Dampak Psikologis Dan Sosial Pada Korban Kekerasan Seksual: Perspektif Viktimologi,” *Jurnal Review Pendidikan Dan Pengajaran* 7, no. 1 (2024): 296–302.

⁹ “Siaran Pers Komnas Perempuan,” *Pharmacognosy Magazine* 75, no. 17 (2021): 399–405.

In terms of implementation, this PERMA provides guidelines for judges to identify situations where unequal treatment may happen and how to address them, taking into account the social and cultural contexts that may influence the case. For example, these guidelines direct judges to consider the backgrounds of victims and perpetrators, as well as the power dynamics within their relationships, so that decisions are not only based on positive law but also reflect social justice considerations. Additionally, PERMA seeks to improve women's access to justice by reducing barriers often faced by women within the judicial system, such as social stigma and gender bias. Moreover, PERMA No. 3/2017 mandates the courts to carry out mediation processes with a gender-sensitive approach, creating a more supportive environment for victims of gender-based violence.

However, despite PERMA being a progressive step, challenges remain in its implementation. Some obstacles include a lack of understanding of gender principles among law enforcement officers and the general public, as well as the need for further training to ensure that these guidelines are applied consistently across all levels of the judiciary. Therefore, collaboration among various stakeholders—including government agencies and civil society organizations—is essential to ensure that PERMA No. 3 of 2017 can be internalized and effectively implemented within the Indonesian judicial system.

The law enforcement process related to gender-based violence (GBV) cases in Indonesia involves several mechanisms designed to protect victims and hold perpetrators accountable. This process begins with the victim's report, which can be submitted through various channels, including the police, women's protection agencies, or non-governmental organizations. After receiving the report, the police conduct an initial investigation to gather evidence and information related to the case.

Following the investigation, if sufficient evidence is found, the case proceeds to the prosecution stage. At this stage, investigators examine witnesses and suspects, as well as collect relevant evidence. It is important to note that in handling GBV cases, police are expected to adopt a gender-sensitive approach, in accordance with Supreme Court Regulation No. 3 of 2017, which emphasizes the need for fair and non-discriminatory treatment of women who are involved in legal proceedings. If the investigation yields sufficient evidence, the case will be forwarded to the public prosecutor for prosecution proceedings. The prosecutor plays a crucial role in determining whether a case will proceed to court or not. During this process, prosecutors must also consider aspects of victim protection and ensure that their rights are respected throughout the legal process. Furthermore, if the case is brought to court, judges will examine the evidence and listen to testimonies from all involved parties. In the context of gender-based violence (GBV), judges are expected to apply principles of restorative justice that take into account the needs of the victims and the impact of the violence. The judge's ruling may include imprisonment for the perpetrator or rehabilitative measures, depending on the severity of the offense.

However, despite the established legal enforcement mechanisms, significant challenges persist in their implementation. Many GBV victims face social stigma and a lack of understanding about their rights, which often discourages them from reporting incidents of violence. Additionally, the lack of training for law enforcement officers regarding gender issues can hinder effective law enforcement.

Therefore, collaborative efforts among the government, civil society organizations, and international agencies are necessary to raise awareness about gender-based violence and to strengthen the capacity of law enforcement agencies to handle such cases in a gender-sensitive and fair manner.

Gender-Based Violence from the Perspective of Human Rights

Women facing the legal system in Indonesia often encounter various challenges that hinder their access to adequate legal protection. One of the main challenges is the lack of a gender perspective among law enforcement officials. This is evident in cases where judges' decisions do not consider the power dynamics between victims and perpetrators, such as in the case of Baiq Nuril Maknun, where the ruling did not sufficiently reflect an understanding of the existing power relations.

Furthermore, women who become victims of violence frequently experience revictimization, whereby they are re-victimized within the legal process itself. The legal procedures, which tend to prioritize the rights of suspects or defendants, also create injustices for women. Mass media often publicizes the identities of female victims, thereby increasing social stigma and pressure on them. Additionally, many women do not receive adequate legal support, making them feel isolated and powerless in facing the judicial process.

Discriminatory practices also emerge, such as the examination of female victims together with the suspects, and the possibility of receiving lighter sanctions for perpetrators due to the application of inappropriate legal articles. This indicates that Indonesia's criminal justice system has not yet fully provided optimal protection for women.

Although Supreme Court Regulation No. 3 of 2017 concerning Guidelines for Judging Cases of Women Facing the Law has been issued as a step to address these issues, challenges remain in its implementation. This regulation aims to ensure that the judicial process is free from gender discrimination and provides fair protection for women. However, without adequate socialization and training for law enforcement officials regarding the application of gender principles in case handling, the effectiveness of this regulation remains questionable.

At the international level, one of the key instruments protecting women's rights is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified by Indonesia through Law No. 7 of 1984. CEDAW emphasizes that gender-based violence is a form of discrimination that must be eliminated, and that states have an obligation to protect women from all forms of violence and to ensure their access to justice and legal protection.¹⁰

At the national level, Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT) is a crucial legal foundation that recognizes gender-based violence (GBV) as a violation of human rights. This law specifically addresses various forms of violence experienced by women within the household, such as physical, psychological, sexual violence, and neglect. Additionally, it grants victims the right to protection from authorities and access to healthcare and rehabilitation services to ensure recovery and justice.

Women's rights are also constitutionally guaranteed in the 1945 Constitution of the Republic of Indonesia, which states that every person has the right to legal protection and shall not be treated discriminatively. Furthermore, Law No. 39 of 1999 concerning Human Rights emphasizes that women have the right to live free from violence and discrimination, reinforcing the national commitment to protect women's rights and ensure they receive fair and equal treatment in all aspects of life.¹¹

¹⁰ Adhi Santika, "Laporan Pengkajian Hukum Tentang Optional Protocol Cedaw Terhadap Hukum Nasional Yang Berdampak Pada Pemberdayaan Perempuan," *Departemen Hukum Dan Ham*, 2007, 1–68, https://www.bphn.go.id/data/documents/optional_protocol_cedaw_terhadap_hukum_nasional_yang_berdampak_pada_pemberdayaan_perempuan.pdf.

¹¹ <https://fahum.umsu.ac.id/blog/pasal-pasal-yang-mengatur-tentang-ham-hak-asasi-manusia-di-indonesia/> Diakses senin, 18 november 2024

One of the main impacts of gender-based violence (GBV) is the violation of the right to live free from violence and inhumane treatment. Women who experience violence, whether physical or psychological, often face long-term consequences, including mental trauma, post-traumatic stress disorder, and physical health problems such as serious injuries or sexually transmitted diseases resulting from sexual violence. Additionally, GBV can lead to adverse social and economic effects, such as social stigma, social isolation from the community, and loss of income due to an inability to work or participate in economic activities.

Islamic Politics in Gender-Based Violence

Islam explicitly condemns all forms of violence against women and emphasizes the importance of protecting and respecting their rights. In this context, Islam teaches that all human beings, including women, possess high dignity and must be treated with respect. One of the fundamental principles in Islam is gender equality, reflected in various verses of the Qur'an and Hadith that call for kindness and fair treatment toward women.

Islam prohibits practices of violence such as physical abuse, sexual harassment, and all forms of torture. For example, in the Qur'an, Allah commands that husbands treat their wives with kindness and mutual respect (Qur'an 30:21). Additionally, Islam condemns sexual violence, including rape, asserting that victims should not be blamed for what they have endured. From an Islamic perspective, perpetrators of violence are fully responsible for their actions, while victims are to be protected and honored.

In the context of Islamic law, gender-based violence is recognized as a serious violation of human rights. Islamic law prescribes various punishments for sexual offenses, including qisas (retribution or proportional punishment) and hudud (fixed punishments prescribed by Sharia for specific crimes). However, it is important to note that Islamic law also requires strong evidence and a fair legal process before any punishment is meted out.¹²

Legal reform necessary to enhance protection for gender-based violence (GBV) victims in Indonesia involves several proposed regulatory changes aimed at strengthening the legal protection system. First, the development of a specific law on GBV is crucial, considering that while Law No. 23 of 2004 concerning the Elimination of Domestic Violence exists, a more comprehensive law specifically addressing all forms of GBV, including online gender-based violence, is needed. Additionally, revisions to Law No. 13 of 2006 concerning Victim and Witness Protection should be undertaken to encompass safeguards for all crime victims, including those affected by GBV.

Strengthening reporting mechanisms and case handling is also a priority, with the development of integrated services providing legal, medical, and psychological support for victims. The importance of education and training for law enforcement officials cannot be overlooked; officers need to understand gender issues and women's rights through regular training to handle GBV cases fairly and empathetically.

Furthermore, broad public awareness campaigns about women's rights and the importance of reporting gender-based violence can help reduce social stigma and encourage more victims to seek help. Given the rising incidence of online GBV, specific regulations should be established to protect victims of online gender-based violence (OGBV), including effective case handling mechanisms.

Lastly, integrating policies for emergency situations is vital, considering how disasters can increase GBV cases; this includes providing safe spaces for women and children during emergencies. Through comprehensive legal reforms, it is hoped that protections for GBV victims can be significantly improved, creating a safer and more supportive environment for women in Indonesia.

¹² <https://www.detik.com/hikmah/khazanah/d-7477500/sumber-hukum-islam-al-quran-hingga-qiyas>. Diakses senin, 18 november 2024

Recommendations for Enhancing Legal Protection

To enhance public understanding of women's rights and legal protection, several strategies can be implemented. First, comprehensive education and socialization programs regarding women's rights should be conducted across various community levels. This could include seminars, workshops, and information campaigns that explain women's rights based on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and national laws such as Law No. 23 of 2004 on the Elimination of Domestic Violence. Through these programs, society can better understand the importance of gender equality and legal protection for women.

Second, collaboration with civil society organizations is also crucial. These organizations often have experience and resources to advocate and educate the public on GBV issues. By working together, the government and civil society can create more effective programs to raise awareness of women's rights. Furthermore, social media and digital platforms can be utilized to disseminate information about women's rights broadly and quickly. Engaging and informative online campaigns can reach larger audiences, especially the younger generation, making them more sensitive to gender issues.

Additionally, training for law enforcement officers is necessary to ensure they understand the importance of protecting women's rights in law enforcement processes. By increasing knowledge and gender sensitivity among law enforcement personnel, the legal process can become fairer for GBV victims. Lastly, strengthening government policies that support women's rights protection is vital. The government must commit to implementing existing laws consistently and evaluate the effectiveness of these policies. This way, the public will see tangible actions from the government in safeguarding women's rights.

CONCLUSION

The role of law in addressing gender-based violence (GBV) from the perspectives of human rights and Islamic politics shows that, despite the existence of legal frameworks supporting women's protection, significant challenges remain in their implementation. Laws such as Law No. 23 of 2004 on the Elimination of Domestic Violence and Supreme Court Regulation No. 3 of 2017 provide important legal foundations; however, gaps in enforcement, social stigma, and a lack of understanding among law enforcement officials hinder the effectiveness of protections for victims.

GBV not only violates women's human rights but also reflects deep gender inequality within society. Therefore, comprehensive legal reform is necessary, including the drafting of specific legislation on GBV and improvements in reporting mechanisms and case handling processes. Additionally, effective education and socialization strategies should be implemented to enhance public understanding of women's rights and legal protections.

The role of political parties is also crucial in advocating policies that favor women and integrating GBV issues into political agendas. Through collaboration among the government, civil society organizations, and all stakeholders, it is hoped that a safer and more supportive environment for women can be created.

Overall, to effectively combat GBV, a holistic approach is required, encompassing regulatory changes, increased public awareness, and strong commitment from all parties to eliminate all forms of gender-based violence. With these steps, it is expected that women's rights can be better respected and protected in Indonesia.

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