

Optimizing Legal Protection against Gender-Based Violence From an Islamic Perspective

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Abstract

Gender-based violence in Indonesia is increasingly concerning, despite the existence of numerous laws and regulations aimed at its regulation. This violence significantly impedes development, as its multifaceted impact hinders women's participation, compromises health, and diminishes autonomy across political, economic, social, and cultural spheres. The research addresses several key questions: 1) What is the extent of legal protection against gender-based violence in Indonesia? 2) How is gender-based violence addressed within Islam? 3) How can legal protection against gender-based violence be optimized from an Islamic perspective? The research methodology is qualitative, using a normative approach and drawing from secondary sources like literature accessed through library research. Data analysis is conducted through descriptive analysis techniques. The findings of the research indicate that in Indonesia, legal protection against gender-based violence is addressed through various regulations, and similarly, within Islam, there have been numerous reforms pertaining to gender-based protection found in the Quran and hadith. Strategies like theological education, moral guidance, gender equality promotion, and family development with a gender perspective can enhance legal protection against gender-based violence in line with Islamic principles. Aligned with these findings, the article emphasizes the vital importance of preventive measures to reduce the rise of gender-based violence.

Keywords: *Gender-based victims; Islamic Perspective; legal protection; violence*

Abstrak

Kekerasan berbasis gender di Indonesia semakin memprihatinkan dari tahun ke tahun, meskipun telah ada banyak peraturan perundang-undangan yang mengaturnya. Kekerasan semacam itu menjadi salah satu hambatan dalam pembangunan, karena dampaknya yang kompleks dapat menghambat partisipasi perempuan, mengganggu kesehatan, dan mereduksi otonomi perempuan dalam berbagai aspek kehidupan, baik politik, ekonomi, sosial, maupun budaya. Permasalahan dalam penelitian ini meliputi 1) bagaimana perlindungan hukum terhadap kekerasan berbasis gender di Indonesia? 2) bagaimana perlindungan Islam terhadap kekerasan berbasis gender? dan 3) bagaimana optimalisasi perlindungan hukum berbasis gender dari perspektif Islam?. Metode penelitian yang digunakan adalah metode kualitatif dengan pendekatan normatif, yang mengumpulkan data dari sumber sekunder seperti literatur yang diperoleh dari penelitian kepustakaan. Data tersebut kemudian dianalisis dengan teknik analisis deskriptif. Hasil penelitian menunjukkan bahwa di Indonesia, perlindungan hukum terhadap kekerasan berbasis gender telah diatur dalam berbagai regulasi, demikian juga dalam Islam telah terjadi banyak reformasi terkait perlindungan berbasis gender dalam al-Qur'an dan hadis. Untuk mengoptimalkan perlindungan hukum terhadap kekerasan berbasis gender menurut Islam, pendekatan pendidikan teologis, pendidikan akhlak dan etika, kesadaran akan kesetaraan gender, serta pembangunan keluarga berperspektif gender dapat dilakukan. Sejalan dengan hal tersebut, tulisan ini menekankan perlunya upaya preventif untuk menekan peningkatan kekerasan berbasis gender.

Kata kunci: *Kekerasan; Korban Berbasis Gender; Perlindungan Hukum; Perspektif Islam*

DOI: <http://dx.doi.org/10.31332/ai.v0i0.5406>

Received: 09/12/2022; Accepted: 30/05/2024; Published: 31/05/2024

A. Introduction

Gender-based violence has become a prevalent phenomenon in society. In fact, all religions prohibit any form of violence. Therefore, any acts of violence perpetrated by individuals or groups contradict religious teachings and prevailing social norms, making such

behavior unjustifiable.¹ Acts of violence also signify deviant and uncivilized human behavior. Victims of violence are predominantly children and women, although there are also male victims; however, their numbers are not as substantial as those of children and women. Nevertheless, the ongoing phenomena indicate a continuous increase in violence, particularly against women.²

Gender-based violence is a pervasive phenomenon in society, persisting despite the universal condemnation of violence across all religions. Such acts, whether perpetrated by individuals or groups, contradict religious teachings and societal norms, and are inherently unjustifiable.³ Moreover, they signify deviant and uncivilized behavior, perpetuating a cycle of harm and suffering.

The act of abusing physical force or employing unlawful means, regardless of causing harm to an individual's body, life, and freedom, which may result in injury, unconsciousness, and helplessness⁴. Physical violence against children and women is a frequently encountered issue, discussed not only within Indonesia as a developing nation but also recognized as a serious global problem addressed at the international level.⁵ A prevalent form of violence, occurring both in personal settings such as families and in broader social environments, is gender-based violence. This type of violence involves both men and women, with women typically being the victims, stemming from the unequal distribution of power between genders.⁶

Islam, as a religion of *rahmatan lil alamin* (a religion that spreads love), which is adhered to by the majority of the Indonesian population, clearly rejects all forms of violence, including violence against women.⁷ In fact, in history, the arrival of Islam as a religion brought by the Prophet Muhammad *pbuh* has been interpreted as liberation for women from all forms of oppression, violence and injustice. The Qur'an and the hadith of the Prophet Muhammad *pbuh* teach a lot about treating women with respect and compassion and emphasize the importance of giving them an honorable position.⁸

Numerous studies related to this research have been conducted, including several studies and literature reviews on gender-based legal protection. Among others, research conducted by Jawade Hafidz⁹, Fadillah Adkiras¹⁰, Stella Hita Arawinda,¹¹ Ardicha Caterine¹²,

¹ Tohir Yuli Kusmanto, "Penanganan Berbasis Rumah Sakit Terhadap Korban Kekerasan Berbasis Gender," *Jurnal Studi Gender* (2012): vol 7 (2): 113. Doi: 102158/sa.v7i2.652

² Istiana Heriani, Dkk. *Konsep Perlindungan Hukum Peradilan Bagi Korban kekerasan Dalam Rumah Tangga (Anak dibawah umur)*, *Jurnal Jantera Hukum Borneo* (2022) : Vol 5 (2): Garuda3486575

³ Tohir Yuli Kusmanto, "Penanganan Berbasis Rumah Sakit Terhadap Korban Kekerasan Berbasis Gender," *Jurnal Studi Gender* (2018): vol 7 (2): 113. Doi: 102158/sa.v7i2.652

⁴ Marauli Sahat Tua Situmeang & Ira Maulia Nurkusumah. *Pengaturan KBGO*. (2021): 3 (2): 162-177

⁵ Munajah, Dkk. *Penyuluhan Hukum Mengenai Aspek Hukum Pencegahan Kekerasan Terhadap Perempuan dan Anak Kepada Pengurus dan Anggota Aisyah ranting Cempaka Kota Banjarmasin*. *Jurnal Pengabdian Kepada Masyarakat* (2022): Vol 2 (5) : <https://doi.org/10.53625/jabdi.v2i5.3576>

⁶ Mohd. Rasyid & Asfiah Fitriani Bahagia: "Epistimologi Fiqh dan Kontribusinya Bagi Peneguhan Spirit Gender". *Gender Equality International Journal of Child and Gender Studies*. (2020): 6(2):51. doi: 10.22373/equality.v6i2.7750.

⁷ Irmawati. "jurnal Kajian Ilmu Hukum dan Syariah" *Jurnal PETITA* (2017): 3(2):128–36.

⁸ Nur Rofiah, "Kekerasan Dalam Rumah Tangga Dalam Perspektif Islam." *Wawasan: Jurnal Ilmiah Agama Dan Sosial Budaya* (2017): 2(1):31–44. doi: 10.15575/jw.v2i1.829.

⁹ Jawade Hafidz & Siska Narulita, "Perlindungan Hukum Korban Kekerasan Berbasis Gender Online (KBGO) dalam Hukum Positif Indonesia". *Jurnal Cakrawala Informasi*, Vol.2 No.2 (2022) : 26

¹⁰ Fadillah Adkiras, "Konstruksi Hukum Perlindungan Hukum Kekerasan Berbasis Gender Online Menurut Hukum Hak Asasi Manusia". *Jurnal Lex Renaissance*, No.2 Vol.6 (2021): 376

¹¹ Stella Hita Awarinda, *Perlindungan Hukum Terhadap Perempuan Korban Kekerasan Berbasis Gender Online di Indonesia*, *Jurnal Yustika Media Hukum dan Keadilan*, Vo.24 No.2 (2021) : 76

¹² Ardicha Caterina, Bagaskoro Adi & Dimas Wahyu, "Kebijakan Penegakan Hukum Kekerasan Berbasis Gender Online (KBGO) : Studi Urgensi Pengesahan RUU PKS, *Jurnal Jurist Diction*, Vol 5 No. 1 (2022): 17

Sukadi¹³, and Andang Sari¹⁴. However, no research has specifically discussed the optimization of gender-based legal protection from an Islamic perspective. Therefore, this research differs from previous studies because its aim is to describe efforts to optimize gender-based legal protection in Indonesia by considering the Islamic perspective.

The method used in this research is a qualitative research method with a normative research type. Research data were obtained from secondary sources in the form of library data collected through literature studies from various sources such as books, journals, and other publications. The collected library data were then classified, and their relevance was outlined in this article. Analysis was carried out using descriptive analysis techniques. The research questions to be answered in this study are: 1. What is the legal protection against gender-based violence in Indonesia? 2. What is the Islamic perspective on protecting against gender-based violence? 3. How can gender-based legal protection be optimized from an Islamic perspective?

This research is of paramount importance, given the consistent rise in incidents of violence against women annually. As highlighted by Muladi, violence against women stands as a significant impediment to the development trajectory, owing to its multifaceted repercussions. These repercussions encompass diminished self-esteem, compromised self-assurance, impediments to women's engagement, health adversities, and erosion of women's agency across various domains of life, spanning politics, economics, social dynamics, and cultural spheres.¹⁵ Given the intricate nature of these challenges, violence against women warrants thorough investigation, particularly concerning the optimization of legal safeguards against gender-based violence. This research holds the potential to underpin the formulation of robust policies aimed at curbing the prevalence of gender-based violence in Indonesia. Moreover, it serves as a catalyst for deliberation among stakeholders involved in law enforcement and the protection of human rights, offering valuable insights and perspectives for informed decision-making.

B. Findings and Discussion

B.1. Legal Protection against Gender-Based Violence in Indonesia

Before the Sexual Violence Crime Law (UU TPKS) was passed on April 12 2022,¹⁶ the government had made efforts to tackle violence against women. These efforts include the issuance of Presidential Decree Number 181 of 1998. In article 1 of the decree it is stated that the National Commission on Anti-Violence Against Women¹⁷ was formed with the aim of (a) spreading understanding about all forms of violence against women in Indonesia, (b) creating a conducive environment for eliminating all forms of violence against women, and (c) increasing efforts to prevent and overcome domestic violence and protect human rights.¹⁸

However, this Commission is considered not effective enough in tackling violence against women. In response to this, the government has issued various regulations that support the Commission's efforts. One of them is Law Number 23 of 2004 concerning Domestic Violence, and the most recently passed is the Sexual Violence Crime Law.

¹³ Imam Sukadi & Mila Rahayu Ningsih, "Perlindungan Hukum Terhadap Korban Kekerasan Dalam Rumah Tangga, Jurnal Egalita: Jurnal Kesetaraan dan Keadilan Gender, Vol. 16 No.1 (2021): 56

¹⁴ Andang Sari and Anggreany Haryani Putri, "Perlindungan Hukum Terhadap Korban Kekerasan Dalam Rumah Tangga", Jurnal KRTHA Bhayangkara, Vol. 14 No.2 (2020): 236

¹⁵ Rian Prayudi Saputra, "Penyuluhan Kekerasan Dalam Rumah Tangga (Kdr) Di Pasir Sialang." *Community Development Journal: Jurnal Pengabdian Masyarakat* (2022): 1(2):195–98. doi: 10.31004/cdj.v1i2.5754.

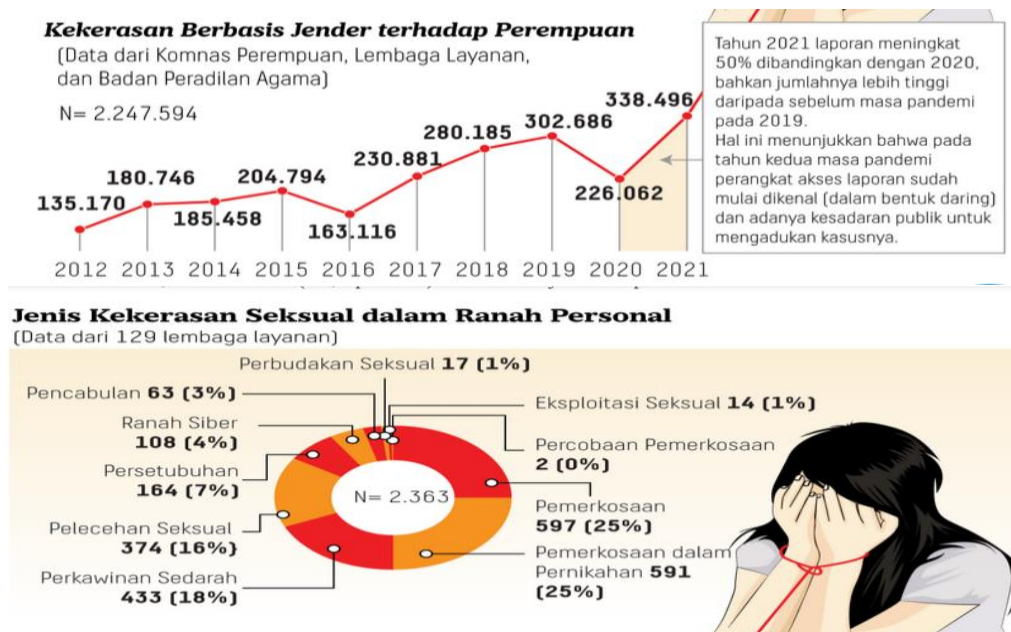
¹⁶ Nur Rohmi Aida, "Liku Perjalanan RUU TPKS Hingga Disahkan Jadi Undang-Undang." *Kompas.Com*. Retrieved (2022): (<https://www.kompas.com/tren/read/2022/04/12/190000565/liku-perjalanan-ruu-tpks-hingga-disahkan-jadi-undang-undang?page=all>)

¹⁷ Marauli Sahat Tua Situmeang & Ira Maulia Nurkusumah. *Pengaturan KBGO*. (2021): 3 (2): 162-177

¹⁸ Wina Puspita Sari, Casa Bilqis Savitri, D. I. I. I. "Kampanye KOMNAS Perempuan Pada Kampanye 16 Hari Anti Kekerasan Terhadap Perempuan. (2019): Hubungan Masyarakat, Fakultas Ilmu Sosial, Universitas Negeri Jakarta, and Email Winapuspitasari@gmail.com." 7(2):136–50.

Cases of violence against women in Indonesia are like an iceberg that only shows a small part of the whole problem. According to data from the Online Information System for the Protection of Women and Children (Simponi PPA) for the period January 2021 to March 2022, 8,478 cases of violence against women were recorded, with 1,272 of them being cases of sexual violence. Meanwhile, there were 11,952 cases of violence against children, of which 58.6% or 7,004 cases were sexual violence. The graphics below illustrate the significant number of cases of violence that occur, especially sexual violence, which affect both women and children. This highlights the urgent escalation of the need to address this disturbing problem of violence with more effective and comprehensive action.

Picture 1. Gender-based violence in Indonesia on 2021



Source: National Women's Life Experience survey conducted by the Ministry of Women's Empowerment and Child Protection (Kemen PPPA), the Central Statistics Agency, and the Demographic Institute of the University of Indonesia

Based on the 2021 National Women's Life Experience survey conducted by the Ministry of Women's Empowerment and Child Protection (Kemen PPPA), the Central Statistics Agency, and the Demographic Institute of the University of Indonesia, it was found that 1 in 19 women in the age range of 15-64 years had experienced sexual violence from perpetrators. outside of their partner.

Furthermore, a national survey on the life experiences of children and adolescents in 2021 revealed that 4 out of 100 boys and 8 out of 100 girls aged 13-17 years had experienced sexual violence during their lifetime in urban areas. Similarly, in rural areas, 3 out of 100 men and 8 out of 100 women have experienced sexual violence.¹⁹ While numerous regulations exist to address violence against children and women, including strict regulations targeting the elimination of domestic violence, their implementation in society remains weak. Therefore, it is imperative to optimize existing regulations to effectively address the ongoing increase in gender-based violence in Indonesia.

B.1.1. Gender-based violence factors

There are several factors driving gender-based violence, including²⁰ gender inequality, psychological, moral decadence, and limited sex education.

¹⁹ *Ibid*

²⁰ Marauli Sahat Tua Situmeang & Ira Maulia Nurkusumah. *Pengaturan KBGO*. (2021): 3 (2): 162-177

a. Gender Inequality

Gender is a concept that encompasses the traits and behaviors associated with men and women, which are shaped by social and cultural norms. The perspective of sociology and anthropology shows that gender is the result of the division of roles constructed by society at a certain time and place. The concept of gender creates a separation between the characteristics, roles and positions of men and women. For example, men are considered to have masculine characteristics and a dominant role, while women are considered to have feminine characteristics and a subordinate role, with a more prominent role in the public sphere for men and in the domestic sphere for women.

The difference between sex and gender needs to be clearly understood. Sex refers to the biological differences between men and women, while gender refers to the social construction that determines the roles and behaviors that are considered appropriate for each gender. Thus, the differences between sex and gender do not always coincide, because gender is more the result of social and cultural factors than biological factors.²¹ So the differences between sex and gender will be explained in Table 1.

Table 1. The Differences between Sex and Gender

Characteristics	Seks	Gender
Source	Given (God's Provision)	Socio-Cultural Construction
Vision and mission	Equality	Habit
Differentiating Source	Biological (Reproductive Organs)	Culture (Behavior)
Characteristic	Nature (Non-Exchangeable)	Dignity (Interchangeable)
Impact	The creation of values: perfection, peace, benefits both parties	Creation of appropriate and inappropriate norms/conditions
Applicability	Throughout time, everywhere, there are no class differences	Subject to change, varies between classes.

Women often experience gender injustice, such as subordination, marginalization, stereotypes (negative labels), double burdens, and violence. Male dominance in society often results in systematic violations of women's human rights. Therefore, violence against women often occurs due to inequality in power relations between women and men.

b. Psychological

One of the factors causing sexual violence is psychological trauma. Psychological trauma occurs as a result of a traumatic event experienced by a person. For example, a perpetrator of violence may have been a victim of violence himself and is unable to defend himself. Therefore, in their subconscious mind, they may commit violence against other people (victims). Environmental factors, such as family views that consider violence to be normal due to misconceptions, can also contribute to this phenomenon.²²

c. Moral Decadence

The main factor in the occurrence of sexual violence in society is a shift in social and cultural values. According to Professor of Criminology from the University of Indonesia, Bambang Widodo Umar, the ethical and moral values that were previously upheld by society are now starting to decline. Values that were once firmly held become faded or considered obsolete, while no new values emerge as a replacement.²³

d. Limited Sex Education

Sex education in Indonesia is still considered a taboo subject. However, a lack of knowledge about sex is one of the factors causing gender-based violence. Learning about sex

²¹ *Ibid*²² Muh Anwar Fu'ady, "Dinamika Psikologis Kekerasan Seksual: Sebuah Studi Fenomenologi." *Psikoislami : Jurnal Psikologi Dan Psikologi Islam* (2011): 8(2):191–208. doi: 10.18860/psi.v0i0.1553.²³ Esmi Warassih Pujirahayu, *Konstruksi Hukum*. (2021): Vol. 9.

from an early age can help build an understanding of the norms that apply in sexual behavior, as well as help anticipate risky behavior such as casual sex, out-of-wedlock pregnancies, abortion, rape, and transmission of sexually transmitted diseases.²⁴

B.1.2. Indonesian legal regulations preventing gender-based violence

In Indonesia, there are many legal regulations that regulate and prohibit all forms of violence, including gender-based violence. Some of them are 1945 Constitution Articles 28 G and 28 I, Law No. 39 of 1999 concerning Human Rights, Criminal Code (KUHP), Law No. 23 of 2004 concerning the Elimination of Domestic Violence, Law No. 35 of 2014 concerning Child Protection, Law No. 44 of 2008 concerning Pornography, Law No. 19 of 2016 concerning Information and Electronic Transactions, and Law no. 12 of 2022 concerning Criminal Sexual Violence (TPKS).

a. 1945 Constitution Articles 28 G and 28 I

Article 28 G states that everyone has the right to self-protection, honor, dignity and a sense of security from the threat of fear of acting or not acting. Meanwhile, Article 28 I states that everyone has the right not to be tortured and not to receive discriminatory treatment. These provisions apply generally to all individuals, regardless of gender, age or social status.²⁵

b. Law No. 39 of 1999 concerning Human Rights

This law regulates citizens' rights to be free from all forms of violence, including sexual violence. Article 4 states that everyone has the right to live, not be tortured and not be enslaved. This article emphasizes the human rights of every individual to be protected from all forms of violence and abuse.

c. Criminal Code (KUHP)

Articles in the Criminal Code regulate gender-based violence and behavior that is detrimental to morality and decency. For example, Articles 281, 282, and 283 regulate actions that can damage morality. In addition, rape is regulated in Articles 285 to 288, while sexual immorality is regulated in Articles 289 to 295. Regarding human trafficking, Articles 296, 297, and 506 provide relevant provisions, while forced abortion is regulated in Article 299. All of these articles aim to provide a solid legal basis for cracking down on and preventing gender-based violence, as well as providing protection for victims.

d. Law No. 23 of 2004 concerning the Elimination of Domestic Violence

In Law no. 23 of 2004 concerning the Elimination of Domestic Violence (KDRT), regulates all forms of violence in the personal sphere, especially within the family. Domestic violence is defined as any action committed against an individual, especially women, which results in suffering or distress whether physical, sexual, psychological, or through domestic neglect. This includes threats, coercion or illegal restrictions of freedom in the domestic context.

e. Law No. 35 of 2014 concerning Child Protection

In Law no. 35 of 2014 concerning Child Protection, provisions regarding sexual violence against children are regulated in Articles 76 D and 76 E which discuss Rape and Obscenity.

f. Law No. 44 of 2008 concerning Pornography

In Law no. 44 of 2008 concerning Pornography, gender-based violence, especially against women and children, not only occurs in real life but has also spread to cyberspace,

²⁴ Ruwanti Wulandari, & Jaja Suteja. "Konseling Pendidikan Seks Dalam Pencegahan Kekerasan Seksual Anak (KSA)." *Prophetic : Professional, Empathy and Islamic Counseling Journal* (2019): 2(1):61. doi: 10.24235/prophetic.v2i1.4751.

²⁵ Trisna Wulandari, "Makna Pasal 28 Dalam UUD 1945 Untuk Hak Asasi Manusia." *Detik.Com*. Retrieved (2021): (<https://www.detik.com/edu/detikpedia/d-5721614/makna-pasal-28-dalam-uud-1945-untuk-hak-asasi-manusia>).

known as KGBO (Online Gender-Based Violence). Therefore, one of the things that regulates this is Law no. 44 of 2008 concerning Pornography. Article 29 of this law regulates action against perpetrators of spreading private content that has an impact and can be accessed by the public. Disseminating videos or photos of someone in public spaces that can cause stigma or discrimination is a form of violence.

g. Law No. 19 of 2016 concerning Information and Electronic Transactions

In Law no. 19 of 2016 concerning Electronic Information and Transactions, an immoral crime that can ensnare perpetrators of KGBO (Online Gender Based Violence) is regulated in Article 45 paragraph 1. This article states that "Every person intentionally and without right distributes or transmits or makes electronic information accessible or electronic documents that contain moral content as intended in Article 27 paragraph 1, shall be punished with imprisonment for a maximum of six years or a fine of a maximum of six billion."

h. Law no. 12 of 2022 concerning Criminal Sexual Violence (TPKS)

In Law no. 12 of 2022 concerning Criminal Sexual Violence (TPKS), passed in April 2022, comprehensively regulates sexual violence. Article 3 of the TPKS Law sets out the substance of the law. Among other things, the substance of the TPKS Law includes preventing sexual violence, handling and recovering victims, creating an environment free from sexual violence, and ensuring that sexual violence does not happen again. There are many new substances in the TPKS Law that are not regulated in previous regulations, such as: a) covering the handling of sexual violence in other laws, b) ease of reporting, c) protection and recovery rights for victims, and d) restitution funds for victims.

Based on the description above, we can conclude that many regulations have been made to prevent gender-based violence in Indonesia. However, in reality, the level of gender-based violence tends to increase from year to year.

B.2. Islamic Protection against Gender-Based Violence

Islam was present in the midst of Jahiliyah Arab society which was dominated by a very strong patriarchal culture. In this society, women are placed in a very low position.²⁶ According to Yusuf al-Qardhawi, in Jahiliyah Arab society, women's position was considered to be on the same level as objects and animals. They are often treated like chattel, forced into marriage and engaging in sex trafficking, and inherited as inanimate objects, without the right to receive inheritance. They also have no ownership rights, except with permission from the men in the family. The husband has the right to use his wife's property without requiring permission from the wife.²⁷ In fact, in some cases, regulations allow parents to sell their daughters. Some Arab individuals even believe that a father has the right to bury his daughter alive. Moreover, there is a view among this community that men who kill women will not be punished according to qishas and are not required to pay diyat.

According to Islamic historians, during the Jahiliyah era, Arab society did not yet know permanent organizational institutions, except for those that operated in accordance with customs. They do not have officially regulated rules regarding family matters, including regarding marriage and divorce. Therefore, the relationship between men and women at that time can only be described as a simple relationship, with few differences, and very dependent on the traditions of each tribe. These conditions are not much different from the way of life of primitive humans or even far from more advanced civilizations.²⁸ Ibn Taimiyah stated in his book that Arabs harbor a profound disdain for women. In such a social and cultural system, women endure extensive violence, starting from birth, as referenced in Surah an-Nahl verses

²⁶ Nur Rofiah, "Kekerasan Dalam Rumah Tangga Dalam Perspektif Islam." *Wawasan: Jurnal Ilmiah Agama Dan Sosial Budaya* (2017): 2(1):31–44. doi: 10.15575/jw.v2i1.829.

²⁷ *Ibid*

²⁸ Muhammad Husein Haikal, *Sejarah Hidup Muhammad*. (1979): Bandung: Dunia Pustaka Jaya.

58-59.²⁹ This phenomenon is not limited to early Arab societies; many contemporary social systems continue to marginalize women in various aspects, viewing their existence as burdensome or even shameful. Islam emerged with a revolutionary vision to emancipate women from all forms of violence and injustice, both within the household and in public spheres. This concept is depicted in the Table 2:³⁰

Table 2. Islamic Protection for Violence Against Women during the Jahiliyah Period

No.	Women during the Jahiliyah Period	Islamic Protection for Women
1	Their humanitarian status is doubtful	Definitely their humanitarian status
2	Doubted they will be rewarded	Certainly possible
3	Doubted they will go to heaven	Certainly possible
4	Prostituted	Strictly prohibited
5	Gifted	Strictly prohibited
6	Used as Debt Collateral	Strictly prohibited
7	Made into a banquet	Strictly prohibited
8	Buried alive	Strictly prohibited
9	Disowned by their father	The daughter's name is based on the father's
10	Child marriage	Required to reach maturity
11	Not entitled to a dowry	Given absolute rights to dowry
12	Sexually enslaved by husband	Treated appropriately (<i>Mu'asyarah bil ma'ruf</i>)
13	Beaten at will	No hitting
14	Commanded absolute obedience	Must obey as long as it is for good
15	Unlimited polygamy	Limited to 4 and monogamy is recommended
16	Forced to marry	Permission is requested
17	Divorced and reconciled indefinitely	Limited to only 2 times
18	Accused of adultery and punished without due process	Have the right to refuse the li'an oath
19	Hanging status (<i>mu'allaqah</i>)	Prohibited
20	Their livelihood is neglected	Must be given a living
21	Inherited	Prohibited, determined to receive inheritance
22	Subject to the oath of zihar	Husband is subject to kafarat

The Table 2 illustrates that Islam has significantly altered the incidence of violence against women amidst a deeply entrenched patriarchal culture. In a hadith narrated by Imam Bukhari, the companion of the Prophet and the Rightly Guided Caliphs, Umar Bin Khattab testified to the drastic transformation that occurred within himself and Arab society regarding the perception and treatment of women, as follows:

كُنَّا فِي الْجَاهِلِيَّةِ لَا نَعُدُّ النِّسَاءَ شَيْئًا فَلَمَّا جَاءَ الْإِسْلَامُ وَذَكَرَهُنَّ اللَّهُ رَأَيْنَا لَهُنَّ بِذَلِكَ عَلَيْنَا حَقًّا

.... In the past, during the period of ignorance, we never considered women at all. Then when Islam came and Allah mentioned them (in the Qur'an), we realized they had rights over us ... (HR. Bukhari).³¹

The actions of Islam in altering the perceptions and attitudes of pre-Islamic society towards women can be considered revolutionary. Indeed, within the Quran, numerous verses emphasize gender equality and the empowerment of women. Furthermore, in elevating the

²⁹ Ibnu Taimiyah, Abd Halim. *Al-Nubuwwah*. Mesir: (1378): Al-Matbaah al-Syalafiyah.

³⁰ Nur Rofiah, "Kekerasan Dalam Rumah Tangga Dalam Perspektif Islam." *Wawasan: Jurnal Ilmiah Agama Dan Sosial Budaya* (2017): 2(1):31–44. doi: 10.15575/jw.v2i1.829.

³¹ Ibnu Hajar Al-Asqalani, *Fathul Bari*. (2005): Beirut: Dar al-Fikr.

dignity of women, Islam designated the name of a woman, surah An-Nisa', as one of the chapter titles in the Quran.

To elevate the status of women, Islam advocates for fair treatment towards women, both within and outside the institution of marriage. It emancipates women from all forms of oppression prevalent during the pre-Islamic era and prohibits authoritarian behavior towards women. Islam honors women in all roles, whether as daughters, wives, mothers, or members of society.

B.3. Optimizing Gender-Based Legal Protection from an Islamic Perspective

One root cause of gender-based violence is the imbalanced relationships between men and women, husbands and wives, and among children and families.³² The increasing prevalence of violence against women and children serves as evidence that legal sanctions alone are insufficient to deter perpetrators of violence. Hence, preventive measures are crucial to preventing gender-based violence. Therefore, to optimize legal protection against all forms of gender-based violence and support existing legal frameworks, Islam recommends the actions namely theological education, moral and ethic education, fostering gender equality, and building a gender perspective family.

B.3.1. Theological Education Approach

Islam perceives one of the causes of gender-based violence to be the lack of belief in God and the weakening of individual piety. In Indonesia, the belief in the Almighty God is enshrined in Pancasila, the first principle.³³ Therefore, to effectively implement existing legal provisions, fostering belief and piety is paramount. Similar to the approach taken by the Prophet Muhammad in transforming the culture of violence against women in pre-Islamic Arab society, emphasis should be placed on fostering monotheism first. The Prophet effectuated significant societal changes by raising awareness of humanity's existence on Earth as creatures with a Creator who governs them. Awareness of divinity is crucial as it instills consciousness to do good and refrain from evil, including violence. Belief in the concept of divinity underpins all human actions, whether consciously acknowledged or not. By instilling belief in God, human behavior and actions are perceived to have clear meanings and consequences.³⁴

B.3.2. Moral and Ethical Education

According to Imam al-Ghazali, morality is inherent behavior that prompts good deeds without prior consideration,³⁵ while ethics refer to moral values and norms guiding individuals or groups in regulating actions or behaviors. It is also termed as the value system in human life, both individually and collectively. Examining Islamic history, the rapid changes in pre-Islamic Arab society were facilitated by exemplary models reflecting good morals and ethics.³⁶ In Indonesia, this aligns with the practice of the second principle, "Just and Civilized Humanity," which entails treating individuals in accordance with their dignity as creatures of the Almighty God.³⁷ Thus, to prevent the escalation of gender-based violence in society, one of the efforts

³² Triana Sofiani, "Tafsir Agama Dan Kekerasan Berbasis Gender." *Jurnal Penelitian* (2008) : 5(2):1–14.

³³ Marauli Sahat Tua Situmeang & Ira Maulia Nurkusumah. *Pengaturan KBGO*. (2021): 3 (2): 162-177

³⁴ Imam Suprayogo, "Mengubah Masyarakat Dengan Pendekatan Prophetik." *Uin-Malang.Ac.Id*. Retrieved (2014): (<https://uin-malang.ac.id/r/141001/mengubah-masyarakat-dengan-pendekatan-prophetik.html>). accessed 18 Agustus 2023

³⁵ Yoke Suryadarma, and Ahmad Hifdzil Haq. "Pendidikan Akhlak Menurut Imam Al-Ghazali." *At-Ta'dib* (2015): 10(2):362–81.

³⁶ Imam Suprayogo, "Mengubah Masyarakat Dengan Pendekatan Prophetik." *Uin-Malang.Ac.Id*. Retrieved (2014): (<https://uin-malang.ac.id/r/141001/mengubah-masyarakat-dengan-pendekatan-prophetik.html>). Diakses 18 Agustus 2023

³⁷ Yuliyanto, Budi Setiawan. "Analisis Wacana Kritis Pemberitaan Kekerasan Berbasis Gender Di Surat Kabar Harian Suara Merdeka." *Jurnal Ilmiah Komunikasi |MAKNA* (2011): 2(1):13–20.

involves moral and ethical education. Educational institutions should not only focus on knowledge transfer but also instill morals and ethics, encompassing religious teachings, Pancasila values, and socio-cultural norms. This type of education is facilitated through three methods: 1) educators and educational personnel serving as exemplars of good morals and ethics, 2) practicing good morals and ethics as ethical values in daily life, and 3) morals and ethics serving as life guidelines ingrained in every individual.³⁸

B.3.3. Fostering Gender Equality

Fostering awareness among individuals that men and women hold equal positions is imperative. However, this principle can be accepted comprehensively only if Islam is understood holistically. Such understanding can be embraced by believing men and women who accept and position themselves as equals, collaborating to fulfill their obligations to Allah and spread goodness among humanity,³⁹ as stated in Surah At-Taubah: 71:

وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ يَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَيُقِيمُونَ الصَّلَاةَ وَيُؤْتُونَ الزَّكَاةَ وَيُطِيعُونَ اللَّهَ وَرَسُولَهُ أُولَئِكَ سَيَرْحَمُهُمُ اللَّهُ إِنَّ اللَّهَ عَزِيزٌ حَكِيمٌ

The believers, both men and women, are guardians of one another. They encourage good and forbid evil, establish prayer and pay alms-tax, and obey Allah and His Messenger. It is they who will be shown Allah's mercy. Surely Allah is Almighty, All-Wise.

To nurture the principles of equality, it is essential to acknowledge the following: a) Men and women hold an equal standing as servants of Allah and stewards on Earth. b) Both men and women originate from the same materials and creation processes. c) Individuals, regardless of gender, who perform good deeds are equally rewarded and find solace in heaven. d) Men and women serve as helpers for one another. e) The value of every human being is not dictated by gender but by their devotion to piety.⁴⁰

B.3.4. Building a Gender Perspective Family

Research indicates that gender-based violence often occurs within the family due to various factors such as economic issues, infidelity, patriarchal norms, third-party interference, gambling, and differences in principles.⁴¹ Therefore, spouses need to cultivate awareness to foster cooperation in meeting family needs and share roles flexibly. In principle, whoever is stronger in a certain aspect, whether male or female, bears responsibility for the other, who may be weaker in that regard. Both parties can share tasks flexibly, both within the household and outside.⁴²

Marriage should not be solely viewed as legitimizing sexual relations, as often defined by classical scholars.⁴³ Instead, marriage should be understood as: a) "*Mitsaqan Ghaliza*" (a firm covenant), not just between the two individuals but also a commitment to Allah, as mentioned in Surah An-Nisa' : 21. b) Marriage entails dual commitments, horizontally between individuals and vertically in their responsibility to Allah SWT. c) Marriage is established to

³⁸ Fieka Nurul Arifa, "Pencegahan Kekerasan Melalui Pendidikan Karakter." *Pusat Penelitian Badan Keahlian DPR RI* (2019): 11(8):13–17.

³⁹ Nur Rofiah, "Kekerasan Dalam Rumah Tangga Dalam Perspektif Islam." *Wawasan: Jurnal Ilmiah Agama Dan Sosial Budaya* (2017): 2(1):31–44. doi: 10.15575/jw.v2i1.829.

⁴⁰ Wely Dozan, Hopizal Wadi, and Jaswadi. "Dekonstruksi Tafsir Ayat-Ayat Berbasis Gender Dalam Perspektif Pemikiran Feminisme Barat Dan Islam." *Jurnal Al-Wardah* (2021): 15(1):31–48. doi: 10.46339/al-wardah.xx.xxx.

⁴¹ Lembaga Sahabat, and Perempuan Magelang. "Purposive Sampling ." (2009): 3(2):33–50.

⁴² Nur Rofiah, "Kekerasan Dalam Rumah Tangga Dalam Perspektif Islam." *Wawasan: Jurnal Ilmiah Agama Dan Sosial Budaya* (2017): 2(1):31–44. doi: 10.15575/jw.v2i1.829.

⁴³ Abdurrahman al-gazali, *Fiqh Munakahat*. Jakarta (2006): Kencana, 123

attain tranquility (sakinah) through a relationship built on love rather than power dynamics, as indicated in Surah Ar-Rum: 21.⁴⁴

C. Conclusion

Acts of violence, including gender-based violence, are regulated within the Indonesian legal framework. Among these regulations are Articles 28G and 28I of the 1945 Constitution, Law No. 39 of 1999 concerning Human Rights, as well as articles in the Criminal Code that regulate gender-based violence. Gender-based violence refers to acts that damage decency and decency, regulated in Articles 281, 282, and 283. Specifically, regarding rape, it is regulated in Articles 285, 286, 287, and 288, while sexual immorality is regulated in Articles 289, 290, 292, 293, and 294-295. Human trafficking is regulated in Articles 296, 297, and 506, while forced abortion is regulated in Article 299. Additionally, there are laws such as Law No. 23 of 2004 concerning the Elimination of Domestic Violence, Law No. 35 of 2014 concerning Child Protection, Law No. 44 of 2008 concerning Pornography, Law No. 19 of 2016 concerning Electronic Information and Transactions, and Law No. 12 of 2022 concerning Crime of Sexual Violence.

From an Islamic perspective, protection against gender-based violence is carried out by increasing the dignity of women. Islam teaches fair treatment of women, both in the context of marriage and outside marriage, and liberates women from all forms of oppression and abuse of power. This religion also emphasizes respect for women in all aspects of life, including as children, wives, mothers, and members of society. To optimize legal protection against gender-based violence according to Islamic principles, a theological education approach, moral and ethical education, increasing awareness of gender equality, and building families with a balanced gender perspective are needed.

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⁴⁴ Nur Rofiah, “Kekerasan Dalam Rumah Tangga Dalam Perspektif Islam.” *Wawasan: Jurnal Ilmiah Agama Dan Sosial Budaya* (2017): 2(1):31–44. doi: 10.15575/jw.v2i1.829.

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