

# **HADITH SOLUTIONS TO THE PROBLEM OF DOMESTIC ABUSE**

**A Study Analysing the Judicial Divorce of Tsabit's Wife**

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## ***Abstract***

*This study aims to discuss the hadith resolution to the issue of domestic violence by analysing the case of the divorce of Tsabit Ibn Qais' wife. The hadith about the violence committed by Tsabit Ibn Qais against his wife is the basis for analysing the relationship between husband and wife at the level of ma`ruf. The Prophet placed the issue in a policy that reflects Islam as a religion of peace. The construction of the hadith study with the solution of domestic abuse in the form of judicial divorce clarifies that Islamic teachings do not justify violence against wives. So the Messenger of Allah (saw) in his hadith provides a solution to this problem, namely by making the relationship in the household a friendly relationship, namely sharing complaints, and joys and not hiding secrets between each*

*other. When the husband treats his wife with ma'ruf, with affection, the wife will return the affection with something better to her husband and children, so that household life will be warm and sakinah mawaddah warahmah. In addition, the husband as Qawwam in his household must be able to educate his children and wife with gentleness and affection, refraining from educating them physically. However, when a wife is nusyuz, cannot be educated with advice and is not sad when she is separated, then the husband may teach a lesson physically, provided that it is not on the face, does not cause marks and harms the wife.*

**Keywords:** *Domestic Abuse, The Hadith Solution, Judicial Divorce, Tsabit Ibn Qais' wife*

### A. Introduction

Domestic resistance always ends in divorce, which can have a heavy impact on families, especially children. This issue is a crucial issue in fostering marriage.<sup>1</sup> The paradigm of Prophet Adam and Siti Eve, a pair of human beings who took place in the procession of marriage in heaven witnessed by the Archangel Jibril, became the leading law in the history of the origin of human life<sup>2</sup>. A life that is highly upheld and honoured by religion, becomes the perfection of

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<sup>1</sup> Kustini and Nur Rofiah, "Gugatan Perempuan Atas Makna Perkawinan Studi Tentang Cerai-Gugat Di Kota Pekalongan," *HARMONI*, 2015; Fikri Fikri et al., "Kontekstualisasi Cerai Talak Dalam Fikih Dan Hukum Nasional Di Indonesia," *Al-Ulum*, 2019, <https://doi.org/10.30603/au.v19i1.643>.

<sup>2</sup> Hari Widiyanto, "KONSEP PERNIKAHAN DALAM ISLAM (Studi Fenomenologis Penundaan Pernikahan Di Masa Pandemi)," *JURNAL ISLAM NUSANTARA*, 2020.

one's religion related to marriage, because the basic principle is to make marriage half of religion<sup>3</sup>.

So far, there has not been much discussion about the Hadith solution to the issue of domestic abuse in the study of the analysis of the divorce of Tsabit bin Qais' wife. . Meanwhile, this problem is urgent because it is related to; 1) the wife sought divorce by khulu' but there was no right that compelled her to do so by law. 2) a wife brought an action against her husband for divorce based on actions that harmed or oppressed the wife to her possible detriment The condition of harming a wife generally includes not taking responsibility for her physical and mental livelihood, for example, a husband likes to slap his wife (playing hands) and also other people. The essence of harming the wife is related to the facts of many cases or it could be the facts cited in court<sup>4</sup>.

The purpose of this article is to complement the shortcomings of previous studies that did not thoroughly analyse the Hadith solution to the problem of domestic abuse. Accordingly, three questions were formulated; 1) How is the judicial divorce of the wife of Tsabit ibn Qais in the hadith; 2) How the issue of domestic abuse can open the door to divorce; 3) how to find a solution in dealing with divorce whether it comes from the wife or the husband so as to find a path that is in line with the teaching of the Prophet Muhammad Saw. The answers to these

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<sup>3</sup> Ridwan Hasbi, "Elastisitas Hukum Nikah Dalam Perspektif Hadits," *Jurnal Ushuluddin* 17, no. 1 (2011): 23.

<sup>4</sup>Fathonah K. Daud and Nurrohman Syarif, "HAK CERAI PEREMPUAN DALAM HUKUM KELUARGA ISLAM MAROKO," *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 2021, <https://doi.org/10.14421/ahwal.2021.14204>; Ridwan Hasbi and Syafaruddin Hasbi, "THE LEGALITY OF DIVORCE IN THE PERSPECTIVE OF HADITH," *Jurnal Ushuluddin*, 2016, <https://doi.org/10.24014/jush.v24i1.1526>.

three questions will provide an in-depth understanding of the hadith about the divorce petition of the wife of Tsabit ibn Qais.

This study is based on an argument that the divorce of the wife of Tsabit ibn Qais received a good response from the Prophet so that it can be an example in the same matter. The implementation of a wife who sues her husband to be divorced has occurred during the lifetime of the Prophet, which is a reference to the right of wives to be allowed to divorce.<sup>5</sup> A well-known phenomenon is the story of the wife of Tsabit ibn Qais, where two of his wives came to the Prophet to complain about their family problems at different times and for different reasons. The description of the *khulu`* of two wives of Tsabit ibn Qais is found in a well-known hadith narration. Both cases have background reasons for asking for divorce with contextualisation as a solution to domestic abuse today.

### **B. Domestic Abuse In The Hadith**

In domestic life, arguments and disagreements between spouses are normal and commonplace. The cause of arguments can lead to acts of violence. And the one who will most often be affected is the wife.<sup>6</sup> This is evidenced by the many verses of the Qur'an and hadith that

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<sup>5</sup> Iim Fahimah, "Gugat Cerai Wanita Dalam Perspektif Hadis Nabi Muhammad PBUH ( Tela'ah Terhadap Hadis-Hadis Khulu`)," منشورات جامعة دمشق, 2006; Mustating Daeng Maroa and Dri Sucipto, "KAJIAN NORMATIF TENTANG IMPLIKASI HUKUM TERJADINYA CERAI TALAK DAN CERAI GUGAT DALAM PERSPEKTIF KOMPILASI HUKUM ISLAM," *Jurnal Yustisiabel*, 2021, <https://doi.org/10.32529/yustisiabel.v5i1.913>.

<sup>6</sup>Nibras Syafriani Manna, Shinta Doriza, and Maya Oktaviani, "Cerai Gugat: Telaah Penyebab Perceraian Pada Keluarga Di Indonesia," *JURNAL AL-AZHAR INDONESIA SERI HUMANIORA*, 2021, <https://doi.org/10.36722/sh.v6i1.443>.

instruct husbands to treat their wives with good manners. Domestic violence is an act that occurs within the family. The consequences of such violence cause suffering or misery physically, psychologically, sexually, economically and elsewhere. The violence that occurs is usually perpetrated by superiors who have higher or greater power or status, whether in terms of material, economic, social, or class status in the family.<sup>7</sup> In fact, all family members in a household can be victims of violence. The most common experience is that the most frequent victims are women.<sup>8</sup>

حَدَّثَنَا ابْنُ بَشَّارٍ • حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ • حَدَّثَنَا بَهْزُ بْنُ حَكِيمٍ •  
 حَدَّثَنِي أَبِي • عَنْ جَدِّي • قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ • نِسَاؤُنَا مَا نَأْتِي مِنْهُنَّ  
 وَمَا نَذُرُ • قَالَ: «إِنَّ حَرَّتَكَ أَنْ تَشْتِيَ • وَأَطْعَمَهَا إِذَا طَعِمْتَ • وَاكْسَمَهَا  
 إِذَا اكْتَسَيْتَ • وَلَا تُقَبِّحِ الْوَجْهَ • وَلَا تَضْرِبْ». قَالَ أَبُو دَاوُدَ: رَوَى شُعْبَةُ  
 «تُطْعِمُهَا إِذَا طَعِمْتَ وَتَكْسُوهَا إِذَا اكْتَسَيْتَ»

“Ibn Basysyar narrated to us that Yahya ibn Sa'id narrated to us that Bahz ibn Hakim narrated to me that my father narrated to me from my grandfather that I said: O Messenger of Allah, what should we do with our wives and what should we leave out? He replied: "Go to the land where you cultivate as you please. And feed her when you eat, clothe her when you clothe, and do not disfigure her face, and do not strike her." Abu Daud said, Shu'bah, has narrated with the words; you feed him when you eat, and clothe him when you clothe.”

<sup>7</sup> M Sarbini, M Muslim, and U A Yusuf, “Hukum Cerai Gugat Disebabkan Kesulitan Ekonomi,” ... *Hukum Islam Dan ...*, 2021.

<sup>8</sup> Khairil Anwar Laili Rahmah, Al-Mujahidin Noor, “Solusi Al-Quran Terhadap Kekerasan Dalam Rumah Tangga,” *Proceedings of Palangka Raya International and National Conference on Islamic Studies (PINCIS)*, 2021.

The construction of the hadith includes the issue of "do not hit him", meaning that the Prophet forbade physical violence. According to at-Ṭabarī, no one can hit another person unless that person has the right to do so. As in the context of teaching adab, whether it is beating by a husband against his wife if she commits nusyuz. But spanking is the last way to teach a lesson that touches women physically directly. This sanction is a physical warning that is recognised and permitted in Islam, provided that it does not hurt or harm and does not hit the face or other sensitive parts. In other words, it must be a spanking that educates and directs, not a spanking to hurt or torture.<sup>9</sup>

Ibn Nafi' narrated a tradition from Malik Ibn Sa'id that the Prophet was asked for permission to beat a wife, so he said: "Strike, but my honourable men will not strike". In another narration the Prophet said:

«مَا ضَرَبَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ امْرَأَةً لَهُ قَطُّ ● وَلَا جَلَدَ خَادِمًا  
لَهُ قَطُّ ● وَلَا ضَرَبَ بِيَدِهِ شَيْئًا قَطُّ إِلَّا فِي سَبِيلِ اللَّهِ ● أَوْ تُنْتَهَكَ مَحَارِمُ  
اللَّهِ فَيَنْتَقِمُ لِلَّهِ»

"The Prophet Muhammad SAW never once struck his wife or his slave. And the Messenger of Allah never once struck with his hand, except in times of war in the way of Allah or people who violated the prohibitions of Allah, then he took revenge for the sake of Allah"<sup>10</sup>.

Meanwhile, the meaning of "do not disfigure (revile) her face" indicates that husbands should not make fun of their wives' faces, which

<sup>9</sup> Abdul Ghany Mursalin, "Konflik Rumah Tangga Dalam Alquran," *Rausyan Fikr: Jurnal Studi Ilmu Ushuluddin Dan Filsafat*, 2020, <https://doi.org/10.24239/rsy.v16i2.611>.

<sup>10</sup> Abu Al-Husain Muslim Al-Hajaj Al-Qusyairi An-Nasaiburi, *Shahih Muslim* (Riyad: Baitul Afkar Ad-Dauliyah, 1998).

means that the Prophet prohibits insulting, reviling, and making fun of spouses. Psychological violence is an act of violence expressed through body language or other non-physical actions, which targets the opponent's psyche, so that it can have a mental impact, the victim will lose confidence, feel insecure about himself, depressed, and can even disturb the victim's psychological condition.<sup>11</sup> Not only does it have an impact on the victim's psyche, harsh words, mocking or *body shaming* can also have an impact on the victim's health, mocking words and *body shaming* can increase the risk of obesity.

The issue of sexual violence relates to the manner in which it is performed, as long as it is in line with the Hadith "*Come to the land of your cultivation however you wish.*" However, this does not mean that intercourse depends on the will of the husband alone, and the wife is only a means of waiting for that will. The wife also has the right to invite and determine how she is comfortable. If a husband coerces his wife to engage in sexual activity without considering her condition or even threatening her, then this act is categorised as sexual violence against his wife (marital rape)<sup>12</sup>.

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<sup>11</sup> Wanda Marsella and Stevany Afrizal, "KONFLIK RUMAH TANGGA AKIBAT PERGESERAN PERAN SUAMI ISTRI SELAMA PANDEMI COVID-19," *Sosial Khatulistiwa: Jurnal Pendidikan IPS*, 2022, <https://doi.org/10.26418/skjpi.v2i2.54785>.

<sup>12</sup> Diyan Putri Ayu, "Tinjauan Maqashid Syari'ah Terhadap Akibat Tindakan Marital Rape Dalam UU No.23 Th. 2014 Dan RUKHP," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, 2019, <https://doi.org/10.37680/almanhaj.v1i2.172>.

### **C. The Divorce of The Wife Of Tsabit Ibn Qais In Hadith**

A complaint divorce is the dissolution of a marriage relationship caused by a judge's decision or a lawsuit from the wife who has entered into a valid marriage according to Sharia law<sup>13</sup>. According to KHI contained in article 132 paragraph (1), a contested divorce is a divorce suit filed by the wife or her attorney at the Religious / Ulama Shari'ah court whose jurisdiction covers the plaintiff's residence unless the wife leaves her residence without the husband's permission<sup>14</sup>.

According to the majority of scholars, divorce or khulu' is permissible or permissible. The wife may file for divorce or khulu' when she feels uncomfortable if she continues to live with her husband, either because of the husband's bad character or the husband does not give her her rights back<sup>15</sup>.

The wife is allowed to apply khulu' when she feels uncomfortable staying with her husband, either because of the bad character of her husband, or fear of not being given her rights or her obedience to her husband does not incur the wrath of Allah SWT<sup>16</sup>. Under these conditions, Khulu' for the wife can be legitimised, as in a hadith narrated by Ikrimah:

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<sup>13</sup> A Pertiwi, "Tren Gugat Cerai Dini Di Kecamatan Taman Sidoarjo: Analisis Teori Konflik Ralf Dahrendorf," *Skripsi*, 2020.

<sup>14</sup> Saidaturrahmah Saidaturrahmah, "BIMBINGAN DAKWAH KEPADA PASANGAN GUGAT CERAI DI MAHKAMAH SYAR'IAH BIREUEN," *SYARIAH: Journal of Islamic Law*, 2020, <https://doi.org/10.22373/sy.v1i2.57>.

<sup>15</sup> efri Sulthonudin, M.Yustafad, and dkk, "Cerai Gugat Istri Akibat Suami Dipidana Penjara Menurut Perspektif Hukum Islam Dan Hukum Positif :," *Legitima : Jurnal Hukum Keluarga Islam*, 2019.

<sup>16</sup> Muzakkir Abu bakar, "Meningkatnya Cerai Gugat Pada Mahkamah Syar'iyah," *Kanun Jurnal Ilmu Hukum*, 2020, <https://doi.org/10.24815/kanun.v22i2.16103>.



عَنْ عِكْرِمَةَ ۖ عَنِ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا ۖ قَالَ: جَاءَتْ امْرَأَةٌ ثَابِتِ بْنِ قَيْسِ بْنِ شَمَّاسٍ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ۖ فَقَالَتْ: يَا رَسُولَ اللَّهِ ۖ مَا أَنْقَمُ عَلَيَّ ثَابِتٍ فِي دِينٍ وَلَا خُلُقٍ ۖ إِلَّا أَنِّي أَخَافُ الْكُفْرَ ۖ فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «فَتَرُدِّينَ عَلَيْهِ حَدِيقَتَهُ» ۖ فَقَالَتْ: نَعَمْ ۖ فَرَدَّتْ عَلَيْهِ ۖ وَأَمْرُهُ فَفَارَقَهَا

"Narrated Ikrimah from Ibn Abbas saying: The wife of Thabit ibn Qays came to the Prophet and said: "O Messenger of Allah, I do not reproach Thabit in any religious or moral matter, but I cannot live with him. " So the Prophet said: "Do you persist in returning his garden? Thabit's wife said: Yes. So she returned his garden, and he divorced her."

The paradigm in the Hadīth connotes that it is permissible for a wife to ask for a divorce from her husband for reasons justified by the Shariah. This kind of divorce is called *khulu'* or *talaq ransom* which explains how the wife of Tsabit bin Qais came to the Prophet Muhammad and explained her desire to divorce her husband because she was afraid of her husband's unstable condition in terms of piety<sup>17</sup>. This phenomenon indicates that the conflict that arises as described is still general, but what is determined by the Prophet is unlikely to decide a matter just because of trivial matters. We know how much the Prophet loved and cared for his ummah, and feared and submitted to everything commanded by Allah, and surely the Prophet knew better that the thing

<sup>17</sup> Kustini and Rofiah, "Gugatan Perempuan Atas Makna Perkawinan Studi Tentang Cerai-Gugat Di Kota Pekalongan."

that is permissible or allowed but hated by Allah is divorce, such as divorce<sup>18</sup>.

In the case of Tsabit ibn Qais above, Ibn Qudamah was also of the opinion that it is better for them to divorce. However, if the wife does not have a clear reason, then she should not ask for khulu'. This is because it is forbidden for a wife to ask her husband for a divorce; in fact, a hadith states that Allah and the angels curse the woman who asks her husband for a divorce without a legitimate reason, and the scent of Paradise is forbidden to her. As narrated from Tsauban the Prophet said:

أَيُّمَا امْرَأَةٍ سَأَلَتْ زَوْجَهَا طَلَاقًا فِي غَيْرِ مَا بَأْسٍ ۖ فَحَرَامٌ عَلَيْهَا رَائِحَةُ  
الْجَنَّةِ

"Any woman who asks for divorce without a clear reason, it is forbidden for her to smell the scent of heaven" (Daud no. 2226, Tirmidhi no. 1187, Ibn Majah no. 2055).

The Hadīth explains two issues related to divorce; Firstly, the wife asks for divorce by khulu' but there is no right that compels her to do so by law (any wife who does khulu' without good reason) will have Allah, His angels and His messenger censured as punishment. A wife sues her husband for divorce based on actions that harm or oppress the wife to her possible detriment, the curse of Allah and His Messenger is returned to the husband as mentioned in a hadith (the husband threatens his wife until she asks for khulu'). Wife-harm generally includes not taking responsibility for physical and mental maintenance, such as a

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<sup>18</sup> Achmad Baihaqi, "Hak Istri Dalam Taklik Talak Di Tinjau Dari Perspektif Hukum Islam," *Khuluqiyya: Jurnal Kajian Hukum Dan Studi Islam*, 2021, <https://doi.org/10.56593/khuluqiyya.v3i2.66>.

husband slapping his wife (playing with his hands) and other people. The essence of wife-harm is related to the facts of many cases or even the facts cited in court<sup>19</sup>.

As in the Hadith narrated by Rubayyi' bint Muawwiz, it is mentioned that if something happens that can harm the wife, then the wife can sue the husband for divorce, namely:

أَنَّ رُبَيْعَ بِنْتِ مُعَوِّذِ بْنِ عَفْرَاءَ ۖ أَخْبَرَتْهُ أَنَّ ثَابِتَ بْنَ قَيْسِ بْنِ شَمَّاسٍ ضَرَبَ امْرَأَتَهُ فَكَسَرَ يَدَهَا ۖ وَهِيَ جَمِيلَةٌ بِنْتُ عَبْدِ اللَّهِ بْنِ أَبِي ۖ فَأَتَىٰ أَخُوهَا يَشْتَكِيهِ إِلَىٰ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ۖ فَأَرْسَلَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَىٰ ثَابِتٍ ۖ فَقَالَ لَهُ: «خُذِ الَّذِي لَهَا عَلَيْكَ وَخَلِّ سَبِيلَهَا» ۖ قَالَ: نَعَمْ «فَأَمَرَهَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنْ تَتَرَبَّصَ حَيْضَةً وَاحِدَةً فَتَلْحَقَ بِأَهْلِهَا»

“Ar-Rubbayyi' bint Mu'awwidz bint Afra' reported that Tsabit bint Qais bint Shams beat his wife until her hand was fractured, and she was Jamilah bint Abdullah bint Ubay, then her brother came to complain about her husband to the Prophet (peace and blessings of Allaah be upon him), so the Prophet (peace and blessings of Allaah be upon him) sent someone to Tsabit, who said to him, "Take her property that you have paid (dowry), and let her go." Tsabit said "Yes". Then the Messenger of Allah told Ar-Rubayyi' to wait for one menstrual period, then she went to her family.”

The hadith narration about the case of Tsabit ibn Qais's wife Jamilah bint Abdullah who exposed an incident in her household about domestic violence committed by her husband Tsabit ibn Qais so that

<sup>19</sup> Abubakar, “Meningkatnya Cerai Gugat Pada Mahkamah Syar’iyah”; Hasbi and Hasbi, “THE LEGALITY OF DIVORCE IN THE PERSPECTIVE OF HADITH.”

there were signs of violence in the form of Jamilah's hand cracking a bone. Seeing the condition of Jamilah bint Abdullah, her brother came to the Prophet to complain about Jamilah's condition after experiencing violence, then the Prophet sent someone to Tsabit and asked Tsabit to take the dowry he had given to Jamilah and let her go (divorce her). Based on this Hadith, domestic violence is an act that cannot be tolerated. So after Jamilah's brother complained about Jamilah's household to the Prophet, the Prophet explicitly sent someone to Tsabit and told Tsabit:

خُذِ الَّذِي لَهَا عَلَيْكَ وَخَلِّ سَبِيلَهَا

"Take her property that you have paid (dowry) and let her go."

The description of the hadith above indicates that in the process of khulu' there is a compensation or iwadh to the husband, in this case according to the interpretation of the fiqh scholars, it is obligatory and a condition of the khulu' contract. A valid khulu' contract has the legal implication that the woman who performs khulu' is divorced<sup>20</sup>.

There are two factors that cause a person to commit an act of violence. *Firstly*, individual factors. Lack of piety in the individual, poor understanding of marital relationships within the family, and individual temperament characteristics are factors that cause a person to violate Sharia law, including committing domestic violence. *Second*, systemic factors. Violence that occurs today has become a social disease in society, both in domestic and public environments. Violence

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<sup>20</sup>Nurhadi Nurhadi, "MAQASHID SYARIA'AH KHULU' DALAM HUKUM PERNIKAHAN," *Jurnal Diskursus Islam*, 2019, <https://doi.org/10.24252/jdi.v7i2.9721>.

that occurs structurally is caused by the contribution of a system that does not guarantee the welfare of society, ignores spiritual values, and denies the protection of human existence. The use of the system destroys the joints of human life. Economic aspects, such as the capitalist system, neglect the well-being of all humanity<sup>21</sup>.

In article 5 of Law No. 23 of 2004 on the Elimination of Domestic Violence, there are four types of domestic violence<sup>22</sup>; 1) Physical Violence, which is contained in article 6 that: "Physical violence is an act that causes pain, illness, or serious injury. If physical violence was committed in the past and can be seen with the naked eye, it will be easy to prosecute, as material evidence can be used as a strong reason. 2) Psychological Violence, which is contained in Article 7 of the Law on Domestic Violence "Psychological Violence is an act that causes fear, loss of self-confidence, loss of ability to act, helplessness and/or severe psychological suffering to a person. 3) Sexual Violence, which is an act related to coercion of sexual intercourse committed against a person living in the household, as well as sexual coercion of a person in the family with another person for a specific purpose<sup>23</sup>. Forms of sexual

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<sup>21</sup> Abu Yazid Adnan Quthny, "Islam Dan KDRT (Tinjauan Hukum Islam Terhadap Praktek Kekerasan Dalam Rumah Tangga)," *Asy-Syari'ah : Jurnal Hukum Islam*, 2018, <https://doi.org/10.36835/assyariah.v4i1.98>.

<sup>22</sup>Nurain Soleman, "Analisis Perbandingan Hukum Islam Dan Undang Undang KDRT Tentang Kekerasan Dalam Rumah Tangga," *Al-Wardah: Jurnal Kajian Perempuan, Gender Dan Agama*, 2020; Rosma Alimi and Nunung Nurwati, "Faktor Penyebab Terjadinya Kekerasan Dalam Rumah Tangga Terhadap Perempuan," *Jurnal Penelitian Dan Pengabdian Kepada Masyarakat (JPPM)*, 2021, <https://doi.org/10.24198/jppm.v2i2.34543>

<sup>23</sup> Ayu Wendi Hidayati, "Perlindungan Hukum Terhadap Istri Yang Mengalami KDRT Di Desa Tamberu Barat Kabupaten Sampang," *Rechtenstudent Journal* 3, 2022; Soleman, "Analisis Perbandingan Hukum Islam Dan Undang Undang KDRT Tentang Kekerasan Dalam Rumah Tangga."

violence also include: *Ila'* (refusing to have sex with wife), *Zihar* (equating wife with mother), Sodomy (anal sex)<sup>24</sup>. 4) Domestic neglect is contained in the Domestic Violence Law No. 23 Year 2004 but it does not explain what domestic neglect means, However, Salim and Erlies Septiana Nurbani put forward an opinion regarding domestic neglect, that domestic neglect is an act that does not provide life, care or maintenance to a person who according to the law is an obligation of the person concerned<sup>25</sup>. The neglect can also take the form of restricting or prohibiting someone in the household from working properly inside or outside the home, so that the victim is under the control of that person and becomes dependent on other parties.

Domestic violence is very common and often results in disability and even death. There are several factors that lead to domestic violence, including<sup>26</sup>: *Firstly*, Nusyuz attitude of wife or husband is an attitude of disobedience or disobedience to obligations in their household. *Second*, Lack of understanding of the teachings of Islam by each Muslim. *Third*, Imitation of the identity of a son who lives with a father who likes to hit, usually the child will imitate his father's behaviour. *Fourth*, The

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<sup>24</sup> Abu Yazid Adnan Quthny, "ISLAM DAN KDRT (TINJAUAN HUKUM ISLAM TERHADAP PRAKTEK KEKERASAN DALAM RUMAH TANGGA)," *Asy-Syari'ah : Jurnal Hukum Islam*, 2016.

<sup>25</sup> Quthny; Ridwan Hasbi, "Asal Mula Pengkhianatan Istri Dalam Perspektif Hadis Misogini," *Marwah: Jurnal Perempuan, Agama Dan Jender* 16, no. 2 (2017): 201, <https://doi.org/10.24014/marwah.v16i2.4140>.

<sup>26</sup> Alimi and Nurwati, "Faktor Penyebab Terjadinya Kekerasan Dalam Rumah Tangga Terhadap Perempuan"; Martono Martono, "PENYEBAB TIMBULNYA KEKERASAN DALAM RUMAH TANGGA DITINJAU DARI ASPEK HAK ASASI MANUSIA," *Jurnal JURISTIC*, 2021, <https://doi.org/10.35973/jrs.v2i03.2706>.

patriarchal culture that positions men as superior beings and women as inferior beings.

Violence experienced by women can be a traumatic event that if not resolved healthily will become a psychological trauma disorder. On the other hand, if dealt with healthily and effectively, psychological trauma can not only be recovered but will also open up the possibility for the growth of individual abilities to minimise and overcome the adverse effects of a disaster (resilience). Therefore, it is important for victims of domestic violence to receive legal, medical and psychological assistance. Many parties will be involved in the management of victims of violence. In essence, all activities or programmes will be directed at strengthening the resilience of women victims of violence so that they can solve their problems independently and constructively. That unpleasant experiences will continue to exist, and women must realise that they do not deserve to experience (violence) again.

Domestic violence is often the reason for a wife to file for divorce to the Religious Court. If Law No. 23/2004 on the Elimination of Domestic Violence is used as one of the materials to analyse the decision of the Religious Court, then a judge in providing legal considerations when deciding a case, of course, does not forget Law No. 1/1974 on marriage<sup>27</sup>.

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<sup>27</sup> Abubakar, "Meningkatnya Cerai Gugat Pada Mahkamah Syar'iyah."

**D. Hadith Solution to The Issue of Domestic Violence**

How many men are blessed with wives who are more intelligent and meticulous, as well as more patient and wise in the brilliance of their opinions. However, this does not undermine the general principle of men and women. It also does not mean that women are allowed to rule over men, or that men are in the position of women, as this would spoil nature and extinguish marital bliss. The way a woman reconciles with her husband's turning away is by counselling and asking for help or using mediators from those closest to her<sup>28</sup>.

Islam has a unique view on household affairs as well as providing solutions to various problems that occur in the relationship between husband and wife. In anticipation of domestic violence in the household, Islam provides signs to her husband, among others:

**1. Stabilising yourself before becoming a married couple**

The purpose of marriage is to form a *sakinah* (harmonious) family, tranquillity, peace that is felt by all family members, at least the husband, wife and children. There is no *sakinah* wife over the suffering of the husband, no *sakinah* husband over the suffering of the wife, no *sakinah* parents over the suffering of children, no *sakinah* children at the expense of parents<sup>29</sup>. Because marriage is a

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<sup>28</sup> Mochamad Wahid Hasym, "Efektivitas Mediasi Dalam Perceraian Tahun 2013-2014 (Studi Kasus Di Pengadilan Agama Kabupaten Nganjuk)," *DIVERSI : Jurnal Hukum*, 2018, <https://doi.org/10.32503/diversi.v2i1.145>; Tommy Aswinanda Adhamhaq and Kami Hartono, "Pelaksanaan Mediasi Penyelesaian Perkara Perceraian (Studi Kasus Di Pengadilan Agama Kudus)," *Konferensi Ilmiah Mahasiswa UNISSULA (KIMU) 2*, 2019.

<sup>29</sup> Nur Rofiah, "Kekerasan Dalam Rumah Tangga Dalam Perspektif Islam," *Wawasan: Jurnal Ilmiah Agama Dan Sosial Budaya*, 2017, <https://doi.org/10.15575/jw.v2i1.829>.



long act of worship, it is very important to prepare all the supplies to create a household ark that is *sakinah mawaddah warahmah*, far from quarrels and far from violence in it. These provisions include four things, namely: sufficient knowledge about the obligations of husband and wife and the laws of the household, physical readiness in the form of sufficient age and physical health, mental readiness in the form of a strong intention to marry, and for men there must be readiness to provide maintenance<sup>30</sup>.

In addition to self-improvement, someone who wants to get married must first make sure the prospective partner, whether the man can really be a leader in his household, and whether the woman can be a pious wife and mother for her husband and children later. When parents want to marry off their children by looking at wealth, position, and only looking at the material aspects and forgetting to see the important criteria in choosing a life partner, namely religion, then these parents are preparing misery for their children.

## **2. Making home life a friendly relationship.**

Islam stipulates that home life is a relationship of friendship. In order for this friendship to create a relationship that is *sakinah mawaddah warahmah*, Islam gives fair rights to both husband and wife. When a relationship is created through marriage, the husband and wife become a team, friends and partners who must look after each other and create happiness for each other<sup>31</sup>.

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<sup>30</sup> Amir Syarifudin, *Hukum Perkawinan Di Indonesia*, II (Jakarta: Prenada Mulia, 2007).

<sup>31</sup> Mursalin, "Konflik Rumah Tangga Dalam Alquran"; Achmad Baihaqi, "Hak Istri Dalam Taklik Talak Di Tinjau Dari Perspektif Hukum Islam."

In principle, the rights and position of husband and wife are equal, both in domestic life and in social life in society. So that the law provides the same rights and obligations for both parties to perform legal acts. However, both have different roles. The husband is the head of the family, while the wife is a housewife. The wife is obliged to manage household affairs as well as possible<sup>32</sup>. Being the first madrasa for her children, and being a soother and reliever of all her husband's fatigue<sup>33</sup>. Meanwhile, the husband is obliged to protect his wife and fulfil all the needs of household life in accordance with his ability. Nafkah that must be provided by the husband includes clothing, food, shelter, and things needed by the wife for her physical needs and appearance. But not only providing physical support, the husband must also provide inner support for his wife, such as helping his wife do household chores, taking turns looking after children and treating his wife well.

Islam establishes the husband's leadership over his wife in the household. In the life of husband and wife, there are times when problems occur that make the atmosphere less good. For this reason, Allah Swt. establishes the leadership of the household (*qiyadah al-bayt*) in the hands of the husband, namely *الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ* (*The man is the leader of the woman*).

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<sup>32</sup>Gemi Wulandari and Abdul Hayyie Al Kattani, "Islamic Guidance and Counseling Program of Marriage and Family Self Readiness for FAI UIKA Bogor Students," *Prophetic Guidance and Counseling Journal*, 2020, <https://doi.org/10.32832/pro-gcj.v1i2.3384>.

<sup>33</sup> Muhamad Parhan, Dara Puspita Dewi Kurniawan, Aktualisasi Peran Ibu Sebagai Madrasah Pertama Dan Utama Bagi Anak Di Era 4.0, JMIE (Journal of Madrasah Ibtidaiyah Education) Vol. 4, No. 2, 2020.

عَنْ ابْنِ عُمَرَ • أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: " كُتُّكُمْ رَاعٍ •  
 وَكُتُّكُمْ مَسْئُولٌ • فَأَلَمِيرُ الَّذِي عَلَى النَّاسِ رَاعٍ • وَهُوَ مَسْئُولٌ عَنْ  
 رَعِيَّتِهِ • وَالرَّجُلُ رَاعٍ عَلَى أَهْلِ بَيْتِهِ • وَهُوَ مَسْئُولٌ • وَالْمَرْأَةُ رَاعِيَةٌ عَلَى  
 بَيْتِ زَوْجِهَا • وَهِيَ مَسْئُولَةٌ • "

*Ibn Umar r.a. reported that the Messenger of Allah. Said:  
 "You are leaders, who will be held accountable. The ruler is  
 the leader, and will be held accountable for his leadership.  
 The husband is the leader of his family, and will be held  
 accountable for his leadership. The wife is the leader in her  
 husband's house, and will be held accountable for her  
 leadership.*

A husband has the right and obligation to nurture, educate, manage and straighten his wife, the first obligation for him is that he should nurture her and be responsible. He will not be a responsible protector unless he has become a role model in himself and can lead his wife. Straightening does not indicate hitting or scolding, but rather directing, guarding, being gentle, loving and putting things in their place, whether harshly or gently<sup>34</sup>.

عَنْ أَبِي هُرَيْرَةَ • قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «إِنَّ الْمَرْأَةَ  
 خُلِقَتْ مِنْ ضِلْعٍ لَنْ تَسْتَقِيمَ لَكَ عَلَى طَرِيقَةٍ • فَإِنْ اسْتَمْتَعْتَ بِهَا  
 اسْتَمْتَعْتَ بِهَا وَبِهَا عَوْجٌ • وَإِنْ ذَهَبَتْ تُقِيمُهَا • كَسَرْتَهَا وَكَسَرُهَا  
 طَلَاقُهَا»

"Verily, woman was created from a rib. She will never be straight for you on a path. If you want to have fun with her,

<sup>34</sup> Zaharah Abdullah Che, Yahya Zaharah, and Salleh Fatimah, "Adat Perkahwinan Masyarakat Melayu, Kesejajarannya Dengan Nilai Islam: Kajian Di Shah Alam," *ICOMHAC2015 Eproceedings*, 2015.

then have fun. However, there remains a crookedness in her. If you try to straighten it, you will break it. And the break is her divorce," (HR Muslim).

Any husband who understands this will be patient with his wife's shortcomings and misbehaviour. Likewise, the wife will accept her husband's corrections and views on her shortcomings. But there are some women who are very difficult to manage and educate gently, who do not flinch when advised and do not feel sad when separated. In the case of such a woman, it is permissible for the husband to give her a physical lesson. The Qur'an makes the physical lesson the last means of correction, which is the management authority that the husband has<sup>35</sup>.

وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَأَضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا

“And those wives whom you fear may be unfaithful, admonish them, separate them from their beds, and beat them. Then if they obey you, then do not seek to distress them. Verily, Allah is Most High, Most Great.” (Q.S An-Nisa’ ayat 34)

The beating in question is a light blow that does not harm or hurt his wife. Likewise, the husband only has the authority to impose sanctions if his wife commits sins and immoral acts. This is because the husband is the one who is responsible (qawwam) for regulating and maintaining the affairs of his household so that they remain within the corridors of Sharia. However, the husband must

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<sup>35</sup>Mohd Sallehuddin Mohd Khairuddin and Sukimi Mohamad Fauzi, “Impian Dan Realiti Majlis Perkahwinan Orang Melayu Masakini: Kajian Kes Di Pinggir Bandar Kuala Lumpur,” *Geografia*, 2016.

not act authoritarian or like a ruler who cannot be challenged. However, the husband's leadership in the household is to guide, regulate, educate and maintain household affairs to always obey the rules of Allah SWT.

### **3. Domestic problem solving with a third parties**

Islam establishes mechanisms to resolve problems in the household. When there is a dispute between husband and wife that threatens peace, Islam encourages them to be patient and reduce the hatred between them. However, if all that does not work, and the issue of hatred and defiance has gone too far. Islam orders a third party from the husband and wife's family to reconcile them. If the husband and wife cannot agree on a solution to the problem, then it is permissible to reconcile by using an intermediary openly, whose judgement can get them out of the trouble they are in<sup>36</sup>.

*Sulh* or reconciliation is done on the basis that the problems have become so difficult and the ladders to reconcile the disputes that afflict them both cannot be reached easily. This phase of *Sulh* is considered an alternative attempt to unite the family and reconcile the disputes that occur between husband and wife. Islam does not provide any legal requirements in the first *sulh* phase or internal settlement of the problem between husband and wife, because Islam leaves the freedom of settlement to reach a fair agreement to both of them<sup>37</sup>. However, in the second *sulh* phase or *sulh* by involving

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<sup>36</sup> R.A Zahid, "Peranan Mediator Dalam Penyelesaian Sengketa Harta Gono-Gini Akibat Kasus Perceraian.," *Legitima: Jurnal Hukum Keluarga Islam*, 2020.

<sup>37</sup> Hasym, "Efektivitas Mediasi Dalam Perceraian Tahun 2013-2014 (Studi Kasus Di Pengadilan Agama Kabupaten Nganjuk)."

a mediator, Islam places the requirement for *sulh* to be straight and fair on the decision of a fair mediator.

### **E. Conclusion**

A judicial divorce is the dissolution of a marriage relationship caused by a judge's decision or a lawsuit from the wife who has entered into a valid marriage according to Sharia law. According to the majority of scholars, divorce or *khulu'* is permissible or permissible. The wife may file for divorce or *khulu'* when she feels uncomfortable living with her husband, either because of the husband's bad character or the husband does not give her back her rights. The paradigm contained in the hadith connotes the permissibility of a wife asking for divorce from her husband for reasons justified by Sharia. This case happened to the wife of Tsabit ibn Qais, Jamilah bint Abdullah, who exposed an incident in her household about domestic violence committed by her husband Tsabit ibn Qais so that there were signs of violence in the form of Jamilah's hand cracking bones, so the Prophet intervened between the husband and wife, by ordering Jamilah to return her dowry to Tsabit, which means divorce by ransom. Based on this Hadith, domestic violence is an act that cannot be tolerated. Wives who often experience harsh treatment from their husbands have the full right to sue or file for divorce from their husbands.

So to anticipate and also a solution to divorce caused by domestic violence, the Prophet gave signs to his people, such as preparing and perfecting themselves before becoming a married couple, making the relationship between husband and wife in the household like a

friendship, a husband must be able to be *Qawwam* and leader of his household properly and keep away from educating his wife and children physically. and when there is a dispute, first resolve it internally between husband and wife and refrain from going outside, but if the couple cannot reconcile, it is permissible to appoint someone as an intermediary or mediator between them, and when there is a dispute, first resolve it internally between husband and wife and refrain from going out, but if the couple cannot reconcile, it is permissible to appoint someone as an arbiter or mediator between them, provided that the person must be fair and knowledgeable and understand religion.

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