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## ANALYSIS OF ISLAMIC LAW SOURCES ON POSITIVE LAW IN HANDLING CASES OF DOMESTIC VIOLENCE AT THE TERNATE POLICE

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### Abstract

This study aims to analyze the integration between Islamic law and positive law in handling Domestic Violence (KDRT) cases at Ternate Police Department. The background of the research is based on the high number of domestic violence cases in Ternate and the need for a legal approach adaptive to the local socio-religious context. The research problem focuses on how the integration between these two legal systems is applied in practice. This study employs empirical legal research methods with juridical-empirical, normative, sociological, and philosophical approaches. Data collection techniques include interviews, observation, documentation, and literature review. The findings reveal that the Ternate Police Department implements a hybrid justice approach, combining positive law enforcement and settlement based on Islamic *islah* values. This approach demonstrates efforts to adapt national law to the social realities of Ternate society without neglecting the protection of victims' rights. The main obstacles are cultural patriarchal pressure and the victims' economic dependency; however, collaboration with social institutions strengthens the effectiveness of case handling. This study concludes that the integration of Islamic law and positive law in Ternate can serve as an alternative model for addressing domestic violence in culturally religious regions.

**Keywords:** Domestic Violence, Hybrid Justice, Islamic Law, Law Integration, Positive Law



## INTRODUCTION

Domestic violence (KDRT) is a form of violation of human rights that has a serious impact on the victim, both physically, psychologically, and socially. Although the household is supposed to be a safe space and a place to build well-being, the reality is that many cases of violence occur in it, with women and children as the main victims (Fitriani,2022). In the context of Islamic teachings, domestic violence is contrary to the principles of maqāṣid al-syarī'ah, especially in safeguarding the soul (ḥifẓ al-nafs), honor (ḥifẓ al-'ird), and offspring (ḥifẓ al-nasl)( Jasser Auda,2008)

Islamic law emphasizes the importance of creating a harmonious household, as stated in the Qur'an. Ar-Rum verse 21 states that the relationship between husband and wife must be based on affection and peace. This view is affirmed in the Compilation of Islamic Law (KHI) Article 84, which obliges husband and wife to love, respect, and help each other to be born mindfully. Thus, all forms of violence, whether physical, verbal, or emotional, are contrary to the teachings of Islam (Annisah, et al.,2024)

On the other hand, the state, through Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law), emphasizes that domestic violence is a criminal act that must be prevented and acted upon legally. This law contains protection for victims and provides space for law enforcement officials, including the Police, to handle domestic violence cases through the Women and Children Protection unit (PPA). In the context of Ternate City, data on domestic violence cases from 2020 to 2024 shows a fluctuating but still worrying trend, with 18 cases in 2020 and 8 cases in 2024, which signals the need for stronger and more targeted interventions (UUPKDRT,2004)( Arfah, R., Husein, M., & Alhadar, M. (2024), (Suhadi, M. J. (2025, January)

Although there is a strong legal basis both from the aspect of Islamic sharia and positive law, the implementation of handling domestic violence cases at the Ternate Police still faces various challenges. (Adam, A. 2021). One of them is the inequality between the approach of Islamic law, which prioritizes islah (peaceful settlement), and positive law that emphasizes law enforcement and criminal sanctions. In addition, patriarchal cultural factors, the economic dependence of the victim, the lack of protection facilities, and the limited human resources in the police are serious obstacles in handling this case (Zahrah.2005)



Several previous studies have discussed the issue of domestic violence (KDRT) from the perspective of Islamic law and positive law. Zahrah (2024), in her research at the Metro City Police, shows that the implementation of protection for women and children victims of domestic violence is still far from optimal. The main weakness lies in the limited support facilities such as adequate shelter and the lack of investigators who have expertise in the field of psychology and family law. Although structurally the Women and Children Protection Unit (PPA) has been formed, in practice there are still many obstacles in providing comprehensive legal and psychosocial protection. This shows that the existence of policies alone is not enough without adequate infrastructure and human resource support.

Meanwhile, Fitriani.H (2022) conducted research on domestic violence during the pandemic among daily worker families in Pekanbaru. This research highlights the importance of a gender-based approach and the values of justice in Islam, especially through the perspective of *qirā'ah mubādalāh* which emphasizes the reciprocal relationship between husband and wife. Fitriani emphasized that many cases of domestic violence are caused by economic crises, psychological pressure, and low understanding of religion in domestic life. Her research makes an important contribution to integrating progressive Islamic values into efforts to protect victims and resolve domestic conflicts in an ethical and equitable manner.

Tendean and Hanapi (2024), through a comparative study approach, underlined that there is a significant difference between Islamic law and positive law in dealing with domestic violence. According to them, Islamic law emphasizes the *islah* (reconciliation and peace) approach, which prioritizes family values and deliberation, while positive law emphasizes criminal sanctions as a form of deterrence against perpetrators of violence. These differences, if not understood contextually, can cause inconsistencies in law enforcement practices, especially in areas that have cultural and religiosity such as in Ternate.

From the three previous studies, it can be seen that each contributes to the understanding of domestic violence, both from the aspect of legal protection, the gender approach in Islam, and the comparison of the legal system. However, there has not been a specific study of the integration between Islamic law and positive law in handling domestic violence cases in areas that have a strong socio-religious pattern such as Ternate.



The research that the author is currently conducting is trying to fill this gap by examining how the synergy between the two legal systems can be applied harmoniously in law enforcement practices in the Ternate Police. Through an empirical approach, this research focuses on realities on the ground, including cultural, technical, and structural barriers that affect the effectiveness of handling domestic violence (Askana Fikriana et al,2025). In contrast to previous research that was normative or focused on one aspect of law, this study combines juridical, sociological, and theological approaches to present a model of handling domestic violence that is more contextual, inclusive, and oriented towards substantive justice.

Thus, this research not only expands the scope of academic literature in the field of Islamic law and criminal law, but also makes a practical contribution to policymakers and law enforcement officials in formulating strategies for handling domestic violence that are sensitive to the legal, cultural, and religious aspects that apply in local communities

Based on the above background, the formulation of the problem in this study is: What is the form of integration between Islamic law and positive law in handling cases of Domestic Violence (KDRT) in the Ternate Police? . From the formulation of the problem, the purpose of this study is to analyze the integration between Islamic law and positive law in handling domestic violence cases at the Ternate Police, as well as evaluate the effectiveness of its application in providing comprehensive legal protection for victims.

## **LITERATURE REVIEW**

This research departs from the understanding that Islamic law and positive law in Indonesia have an important and complementary role in handling domestic violence (KDRT) cases. In an Islamic perspective, the main source of law is the Qur'an and hadith, followed by ijma' (scholarly consensus) and qiyas (analogy). The Qur'an emphasizes the principle of love and respect in the household, as enshrined in the Qur'an. An-Nisa [4]:19 who commands that husbands treat their wives well, as well as QS. Ar-Rum [30]:21 which describes marriage as a place of sakinah, mawaddah, and rahmah. The hadith of the Prophet PBUH also explicitly rejects violence against women, as he said: "It is best for you to be the best for your family"



(HR. Tirmidhi). In the Islamic view, domestic violence is not only a reprehensible act, but also a violation of moral and social teachings in Islam (Hasyim, 2006).

Legally positive, Indonesia has regulated the handling of domestic violence specifically in Law Number 23 of 2004 concerning the Elimination of Domestic Violence. This law defines domestic violence not only as physical violence, but also includes psychological, sexual, and domestic neglect, as well as providing comprehensive legal protection to victims (Yulia, 2017). This positive law is both preventive and repressive, providing a strong basis for law enforcement officials, such as the Ternate Police, to crack down on perpetrators of domestic violence and protect victims.

In the realm of theory, this study uses the approach of legal pluralism, which explains that in a society, more than one legal system, such as state law, religious law, and customary law can apply simultaneously (Griffiths, 1986). This approach is relevant to the context of Indonesia where the society is religious and respects Islamic norms, such as in Ternate. This theory strengthens the argument that the handling of domestic violence must consider the Islamic values that live in society as a complement to formal legal norms. In addition, Aristotle's theory of corrective justice is also used to assess the extent to which positive law is able to recover the victim's losses and uphold justice for all parties (Rawls, 2006).

Overall, this literature review shows that both Islamic law and positive law have common ground in terms of the principles of protection for victims, the prohibition of violence, and the importance of justice in the household. The synergy between the two not only strengthens the normative foundation in handling domestic violence cases, but also supports legal practices that are in accordance with the local values of the Muslim community as applicable in the Ternate Police Station.

## **RESEARCH METHOD**

This research uses a type of empirical legal research (Muhammad Syahrum, 2022) namely research that aims to examine and understand the implementation of the law in real life in people's lives, especially in the context of handling cases of Domestic Violence (KDRT) at the Ternate Police Station, (Almira Evantiasari, et al., 2025) The approach used is empirical juridical, which combines the study of applicable legal norms (both Islamic law and positive



law) with field data on their application. In addition, a normative juridical approach is also applied to examine in depth written legal provisions such as Law Number 23 of 2004 concerning the Elimination of Domestic Violence as well as Islamic legal principles related to justice, protection of the soul (*hifz al-nafs*), and benefits (*maslahah*). (Kadarudin, 2021). To enrich the analysis, a sociological approach was also used, which highlighted the influence of local culture of the Ternate people in understanding and handling domestic violence cases, as well as a philosophical approach to understand the essence and purpose of legal protection for victims from a sharia and positive law perspective.

. This research was conducted at the Ternate Police Station as the main location, considering that this institution is a state institution that has direct authority in handling domestic violence cases through the Women and Children Protection Unit (PPA). The research was carried out for six months, from September 20, 2024 to March 20, 2025. The subjects of the study include police officers who handle domestic violence cases, victims, perpetrators, counselors or companions, as well as academics or legal practitioners who understand the regulations and practices of handling domestic violence in the perspective of Islamic law and positive law. Meanwhile, the object of the research includes the process and regulations for handling domestic violence in the Ternate Police, both in terms of positive legal procedures and religious approaches that apply in society.

The type of data used in this study consists of primary data and secondary data. Primary data is obtained directly through field activities such as interviews, observations, and documentation (Efrina, at. el, 2021). Interviews were conducted with PPA investigators, clerics, religious leaders, academics, victims, and perpetrators of domestic violence, both through structured and unstructured interview techniques. Meanwhile, observations were made on ongoing legal processes, including mediation, victim assistance, and investigation procedures. The documentation is used to access case reports, court archives, and domestic violence statistics at the Ternate Police. In addition, literature studies are also carried out by referring to legal literature, sharia interpretations, scientific journals, and relevant legal provisions such as the Qur'an, Hadith, Law Number 23 of 2004, and Law Number 16 of 2019 concerning Marriage.



The data that has been collected is analyzed using qualitative analysis techniques. The analysis stages include data reduction to filter relevant information, presentation of data in the form of descriptive narratives and tables to facilitate interpretation, and drawing conclusions based on the relationship between empirical data and legal theory. In addition, comparative descriptive analysis techniques are also used to compare the practice of handling domestic violence according to Islamic law and positive law, as well as deductive and inductive methods. The deductive method is used to derive the analysis from theory to practice, while the inductive method is used to build an understanding of the field data in the direction of generalization. To maintain the validity of the data, triangulation was carried out both from the data source and the data collection method.

With this combination of approaches, this study is expected to provide a holistic and comprehensive picture of the practice of handling domestic violence in the Ternate Police, as well as offer recommendations based on Islamic law values and positive laws that are applicable and relevant to the local context.

## **RESULTS AND DISCUSSION**

This study found that the handling of Domestic Violence (KDRT) in the jurisdiction of the Ternate Police is carried out through a systematic mechanism, although in its implementation it is still faced with various structural and cultural challenges. Data shows that in the 2020–2024 period, the number of domestic violence cases fluctuated, with a significant spike in 2023 reaching 121 cases, dominated by low-income families. This not only indicates the high prevalence of domestic violence, but also the increasing public awareness to report, thanks to education and anti-domestic violence campaigns by police agencies and social institutions

In the aspect of legal settlement, the Ternate Police applies a dualistic approach through formal law enforcement channels based on Law Number 23 of 2004 concerning PKDRT, and the family or restorative justice approach. The formal mechanism includes reporting to the Integrated Police Service Center (SPKT), visum, investigation, and transfer of cases to the court. Meanwhile, the family approach is carried out through mediation involving religious leaders and the community. This dual approach is a form of local adaptation to the



national legal system, although it is not completely free of constraints, especially when perpetrators take advantage of mediation loopholes to avoid legal sanctions.

Different from the findings of Tendean and Hanapi who see that Islamic and positive legal approaches tend to collide, this study actually shows that the Ternate Police are trying to integrate the two. The approach of family mediation based on the values of *islah* in Islam is used selectively and only applies to minor cases. On the other hand, serious cases are still processed legally according to the procedures of the Criminal Procedure Code (KUHP). In this context, the *maqāṣid al-syarī'ah* approach is used as a normative framework to guarantee the protection of the soul (*ḥifẓ al-nafs*) and the honor of the family (*ḥifẓ al-'ird*), so that law enforcement goes hand in hand with local religious and cultural values.

Meanwhile, the most dominant obstacle in handling domestic violence cases at the Ternate Police Station is the lack of consistency of victims in continuing the legal process, social and economic pressures that encourage the revocation of reports, and the lack of evidence and witnesses. This situation is exacerbated by the still strong patriarchal culture, where the extended family tends to push for a peaceful settlement in order to maintain the "disgrace" of the family. This obstacle is in line with the results of Zahrah's research, but this study adds that the active involvement of community leaders and institutions such as UPTD PPA and DP3A contributes to overcoming these obstacles through legal education and psychosocial assistance.

As for victim protection, the Ternate Police has implemented the provisions of Article 16 of the PKDRT Law by providing temporary protection for seven days and coordinating with health agencies, social institutions, and counselors. This mechanism is one of the strengths of law enforcement practices in Ternate, which is rarely highlighted in other studies. In practice, the Ternate Police also provides victims with access to safe housing and counseling services, a progressive step that shows the sensitivity of the law to the needs of victims.

This study shows that the handling of Domestic Violence (KDRT) cases in the jurisdiction of the Ternate Police runs through two main approaches, namely a positive legal approach that refers to Law Number 23 of 2004 concerning the Elimination of Domestic Violence, and an Islamic law approach based on the value of *islah* (reconciliation). This



approach reflects the adaptive efforts of the police institution in responding to the socio-cultural realities of the Ternate community who are religious and still uphold family values (Rosita Alting,2025)

The dominant causes of domestic violence found in this study include economic pressure, infidelity, jealousy, and the influence of alcohol and drugs. Data from the Ternate Police also shows that most of the perpetrators of domestic violence come from the lower middle economic circle, and the majority of victims are wives. This is in line with conflict theory in legal sociology which states that structural pressures such as poverty can magnify the potential for violence in domestic relations (Soerjono Soekanto,2002)

Overall, the results of this study show that the juridical-empirical approach, which integrates positive law, Islamic values, as well as sociological and philosophical aspects, is the most relevant strategy in dealing with domestic violence cases in areas with religious cultural peculiarities such as Ternate. Compared to previous studies that were normative or partial, this study provides a more comprehensive picture of the dynamics of domestic violence law enforcement locally, and offers a contextual and sustainable handling model.

Based on the results of field findings, the application of Islamic law and positive law in handling domestic violence cases at the Ternate Police shows an integration model that is adaptive to local socio-cultural conditions. This model is important because it shows that national laws cannot be applied uniformly without taking into account the local values that live in the community. The selective *islah*-based approach to minor cases, and the application of positive legal sanctions to severe cases, reflect the principles of *maqāṣid al-syarī'ah* which are oriented towards the protection of life, honor, and family stability

From a theoretical point of view, these findings enrich the discourse of modern Islamic law, where *maqāṣid al-syarī'ah* is not only understood in a normative dimension, but can also be implemented in contemporary law enforcement practice. This is in line with Auda's idea of the flexibility of *maqāṣid* principles in facing the challenges of the times. Practically, this approach opens up space for the formation of a hybrid legal model that prioritizes a progressive legal approach based on substantive justice values (*al-'adālah*), rather than mere procedural formalism. This model is not only relevant for Ternate, but can also be applied in other areas that have strong socio-religious characteristics.



However, major challenges still need to be overcome, especially in terms of strengthening the capacity of law enforcement officials to understand the nuances of local culture and Islamic teachings in depth. Integrated training on Islamic family law, victim psychology, and restorative justice approaches is an urgent need to make handling domestic violence more humane and effective.

### **Subject Synthesis**

This research proves that the integration between Islamic law and positive law in handling Domestic Violence (KDRT) cases at the Ternate Police Department has been carried out through a hybrid justice approach, which combines formal mechanisms of positive law with a peace approach (islah) rooted in Islamic law values.

This approach has proven capable of adjusting the law enforcement process to the social and cultural context of the local community, as well as providing more just and humane legal protection for victims. In general, the objectives of this research have been achieved, particularly in identifying how both legal systems can operate synergistically in institutional practices in religious areas such as Ternate.

However, there are still several aspects that have not been fully achieved, particularly regarding the implementation of sustainable and consistent policies in each case. The main obstacles faced include the strong influence of patriarchal culture that normalizes domestic violence, the economic dependence of victims which makes them reluctant to pursue legal processes, and the limited resources at the police level, particularly in the Women and Children Protection Unit. Therefore, it is necessary to encourage the strengthening of coordination among related institutions, the enhancement of law enforcement capacity in understanding Islamic law values contextually, and the strengthening of the economic aspects of victims so that they have legal empowerment. This integration is not merely symbolic, but has great potential to become a strategic policy model in handling domestic violence cases that is more responsive to substantive justice values and local wisdom.

### **CONCLUSION**

From the discussion above, it can be concluded that the integration of Islamic legal sources and positive law in handling Domestic Violence (KDRT) cases at the Ternate Police



Resort is a relevant and adaptive approach to the characteristics of the religious local community. The hybrid approach that combines formal legal mechanisms and the values of *islah* from Islamic law not only reflects local wisdom but also provides a more holistic and dignified justice solution for the victims. The recommended policy is the need to strengthen the domestic violence handling system that explicitly accommodates an Islamic law approach through mediation based on substantive justice values, without neglecting national legal principles.

In order to support this policy, policymakers need to take concrete steps to enhance the capacity of law enforcement officers and other stakeholders in understanding and implementing this integrative approach, including through special training that emphasizes a contextual and responsive Islamic legal perspective to the needs of victims.

To support this policy, policymakers need to take concrete steps by enhancing the capacity of the police and other stakeholders in understanding and implementing this integrative approach, including through special training that emphasizes a contextual and responsive Islamic legal perspective to the needs of victims. Additionally, strengthening institutional synergy between the police, religious institutions, community leaders, and social agencies is necessary so that the handling of domestic violence is not only oriented towards positive law but also able to touch on the cultural and spiritual dimensions of society. In addition, strengthening institutional synergy between the police, religious institutions, community leaders, and social agencies is necessary so that the handling of domestic violence is not only oriented towards positive law but also capable of touching the cultural and spiritual dimensions of society. Support for internal regulations, funding, and continuous monitoring from policymakers is necessary so that this policy does not just remain a discourse but can be implemented tangibly and sustainably in the field. Thus, the integration of Islamic law and positive law can become a model for a more just and contextual resolution of family conflicts in Muslim society.

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