

# **A Policy Analysis from Gender and Islam Perspective on Regarding Elimination of Violence in Household**

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**Abstract:** The law Number 23 of 2004 on the elimination of violence in household outlaws violence occurred within domestic sphere or is committed by relatives such as husband. Even though the law can be considered an improvement in gender discourse within Indonesia, there are still many flaws to be put forward, especially from gender perspective. On the other side, the law encounters controversy since some Muslims regard it a violation to Islamic values. This paper analyzes the law from two perspectives; gender and Islam. From gender perspective, this law is a gender-aware policy and therefore can be regarded as a positive development in struggles over women's rights. From Islamic perspective, the law actually is actually in accordance to principles and values in Islam since Islam prohibits violence and ensures protection on women's rights. To sum up, in spite of certain shortcomings, the law is actually a remarkable achievement in struggles over the improvement of women condition. In addition, with a good understanding on more just interpretation on some related religious texts, Islam actually promotes a peaceful and just relation in a household in particular and between man and women in general.

**Key words:** Violence in Household, Gender Perspective, and Islam Perspective

## **A. Introduction**

Domestic violence is a common problem found in almost every country. To give illustration, the United States agency suggests that one of three women has received physical violence all across the world.<sup>1</sup> In Indonesia, the

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<sup>1</sup>La Jamaa and Hadidjah, *Hukum Islam dan Undang-undang Anti Kekerasan dalam Rumah Tangga* (Surabaya: Bina Ilmu, 2008), p. 24, quotes Yayori Matsui, *Perempuan Asia: dari Penderitaan Menjadi Kekuatan*, transl. G. Buditjahja (Jakarta: Yayasan Obor Indonesia, 2002), p. 3-6.

Ministry Women Empowerment states that around twenty four million women in Indonesia or approximately 11,4% are victims of violence in household.<sup>2</sup> This phenomenon undoubtedly indicates that women still suffer discrimination, not only outside the house, namely discrimination in workplace but also at home, a place where they are supposed to feel safe. Ironically, this also shows that, in some cases, women are also not safe even from their relatives, who supposedly protect and guard them.

Fortunately, on 14 of September 2004, law Number 23 regarding elimination of violence within household is passed.<sup>3</sup> The law is enacted based on several considerations such as the spirit to ensure the freedom of all Indonesian citizens from all kinds of violence, high occurrence of domestic violence and the fact that the existing law has not covered violence within the household.<sup>4</sup> Before the enactment of the law, many cases of domestic violence occurring inside the house and/or committed by relatives were considered 'private matters', and were difficult to deal with due to the absence of a clear legal definition of the crime.<sup>5</sup> This law acknowledges that violence within domestic sphere is a punishable crime. Furthermore, the law also arranges support and protection from the state manifested in shelters and counseling for the victims.<sup>6</sup>

This paper is intended to analyse the law from gender theoretical perspectives and Islam perspectives. The analysis from gender perspective is important because it can reveal both the positive and negative sides of the law. The findings can be beneficial in formulating strategic efforts to improve gender justice in Indonesia. With regard to analysis from

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<sup>2</sup>Lilik Zakiyah Munir, "Domestic Violence in Indonesia", in *Muslim world journal of human rights*, vol. 2, article 5, Berkeley Press, 2005, p. 2, See also Musdah Mulia, *Muslimah Reformis: Perempuan Pembaru Keagamaan* (Bandung: Mizan, nd.), p. 154.

<sup>3</sup>Musdah Mulia, *Muslimah Reformis*, p. 177.

<sup>4</sup>Law no 23 of 2004 regarding Elimination of Violence in Household, Consideration.

<sup>5</sup>Musdah Mulia, *Muslimah Reformis*, p. 178.

<sup>6</sup>Law no 23 of 2004 regarding Elimination of Violence in Household.

Islam perspective, it is important as the law is controversial among Muslim communities. Determining whether the law violates Islamic teaching or otherwise is a crucial aspect for the acceptance and and implementation of the law. The paper will be organized in to three sections; first is section giving explanation on the technical terms and the content of the law, second is critical analysis from gender theoretical perspective, and third is analysis from Islamic perspective.

## **B. Definition and Content of the Law**

There are many definitions of violence in literatures but tend to be relatively similar. Soerjono soekanto, for example, states; "violence is a term used for the occurrence of mental and physical injury or damage".<sup>7</sup> There are at least three kinds of violence. The first is violence in domestic area and personal relation which include various cases of violence where the perpetrator and the victim have personal or intimate relation such as wife, boyfriend/girlfriend, children, and so on. The second is violence in public area. It include various violences occur outside family scope or other personal relation. Some examples are violence in workplace, public area, educational institutions, and so forth. The third is violence committed by or occurs within state include physical, sexual and psychological violence that are justified by the state or government or violence where the state does not take an action to finish it, namely in armed conflict situation.<sup>8</sup>

Violence against woman is defined as gender based violence results in or will result in pain, misery of suffering on women either physically, sexually, psychologically. Such violences can be in form of threat, freedom limitation, forcing,

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<sup>7</sup>Soerjono Soekanto, *Kamus Kriminologi* (Jakarta: Ghalia Indonesia, 1985), p. 104.

<sup>8</sup>Faridatus Syuhada, *Tinjauan Hukum Islam terhadap UUU no 23 TH 2004 tentang Penghapusan Kekerasan dalam Rumah Tangga (Kekerasan terhadap Istri)* (Surabaya: Tesis-IAIN Sunan Ampel, 2005), p. 28-29.

that either takes place in public or domestic.<sup>9</sup> Domestic violence is ill-treatment committed by one person in a family to another family member or to another person within the household.<sup>10</sup> The law No. 23 of 2004 gives broader definition on domestic violence; “Domestic violence shall be any act against anyone particularly woman, bringing about physical, sexual, psychological pain or suffering, and/or negligence of household including threat to commit act, forcing, or seizure of freedom in a manner against the law within the scope of household”.<sup>11</sup>

The term domestic violence is often limited to violence committed by a husband on his wife.<sup>12</sup> This is because victims of domestic violence are mostly women (wife) and the perpetrator are mostly men (husband).<sup>13</sup> Meanwhile, in some other cases, the victims are the husbands, the children, or other family members such as those related due to bloodline etc. The law No. 23 of 2004 covers even broader scope. It does not only ensures protection for those related due to blood relationship (such as children, sisters etc) and marriages (husbands and wives) but also include those suckling the same breast (usually known as *radha’ah*), and even people who work in a household such as maidservants etc. The law states that the scope of household in this law shall include (a) Husband, wife and children; (b) People whose family relationship with the individual referred to under letter a is due to blood relationship, marriage, suckling at the same breast, care, and guardianship, who lives in the household; and/or (c) The individual working to assist the household and living in the household. As to people working as referred to

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<sup>9</sup>Rifka Annisa, *Kekerasan terhadap Perempuan Berbasis Jender*, (Yogyakarta: Paket informasi-Women’s Crisis Center, nd.), p. 2.

<sup>10</sup>Musdah Mulia, *Muslimah Reformis*, p. 155.

<sup>11</sup>Law no 23 of 2004 regarding Elimination of Violence in Household, chapter 1, article 1.

<sup>12</sup>Musdah Mulia, *Muslimah Reformis*, p. 155: See also how most studies on the law and domestic violence usually limits their scope on husband’s violence against wife.

<sup>13</sup>*Ibid.*

under letter c shall be considered as family member during the period while living in the household in question<sup>14</sup>

This is one of the law's positive sides, acknowledging that there are a lot of people in Indonesia working as maidservants or other occupation related to household management. *Human Rights Watch* reports a high number of maidservants have suffered many kinds of violence; sexual, physical, and pshycological.<sup>15</sup>

Another positive side of the law is its comprehensive coverage on violence in many forms. It does not only speak about physical violence, (which is probably the kind of violence mostly found or reported and easily proved), but also includes psychological, sexual, and economic violence. The law states in article 5 that anyone shall be prohibited to carry out violence in household against an individual within the scope of the household, be means of (a) physical violence; (b) psychological violence; (c) sexual violence; or (d) negligence of household. The article 6 states that physical violences referred to in article 5 shall be act bringing about pain, wound, or serious injury whereas article 7 explain that psychological violences referred to in article 5 shall be an act bringing about fear, loss of self confidence, loss of capability to act, hopelessness, and/or serious psychic suffering on someone. Sexual violences is explained in article 8. They shall include forcing sexual intercourse carried out against an individual living within the scope of the household; and forcing sexual intercourse against one of the individuals within the scope of the household for commercial purpose and/or a certain purpose. Article 9 explains that (1) anyone shall be prohibited to neglect an individual within the scope of the household, whilst in fact according to the law prevailing on him/her or on account of acceptance or agreement on he/she shall be

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<sup>14</sup>Law no 23 of 2004 regarding Elimination of Violence in Household, chapter 1, article 2.

<sup>15</sup>See paper on Country Gender Assessment by Asian Development Bank, *Assesing Gender in Indonesia* (Philipina, 2006), p. 60.

obliged to provide livelihood, treatment, or care of a person; (2) the negligence referred to in paragraph (1) shall also apply anyone bringing about economic dependence by limiting and/or prohibiting a person to work properly inside or outside the house thereby the victim is placed under the control of that person.

### C. Critical Analysis from Gender Perspective

The Law No. 23 of 2004 is undoubtedly a significant achievement in measures to bring the improvement on women condition in Indonesia. As suggested by Lilik Zakiyah Munir, the law is “a new hope for justice to women and the oppressed group within the household”.<sup>16</sup> Yet, as the law is a result of long and intense process of debate both within and outside the parliament,<sup>17</sup> it is not flawless that might be caused by some compromises of the conflicting parties involved.

The law is one kind of gender-aware policies. Gender-aware policy acknowledges differences between man and woman and at the same time acknowledges possible gender based problems.<sup>18</sup> Furthermore, the law also can be categorized as gender specific policy because it specifically responds to the needs of women regarding legal protection from the state in domestic violence cases.<sup>19</sup> Although the law is not specific to women and covers male as possible victims, the law acknowledges the fact that women are at weaker position and that victims of domestic violence are mostly women.<sup>20</sup> Here, the policy responds specifically to the needs of

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<sup>16</sup>Lilik Zakiyah Munir, *Domestic Violence in Indonesia*, p. 3.

<sup>17</sup>Musdah Mulia, “Muslimah...”, p.177-178. This information also is from informal interview with Safira Machrusah, a former legislator involved in the drafting and legalization of the law on September 2006.

<sup>18</sup>Sharon Bessell, *Feminist Theory, Foundations*, Lecture in gender and policy, ANU, 25 August 2006.

<sup>19</sup>Law no 23 year 2004, consideration, article 1; the law is successfully legalized after a long struggle process from many oppressor groups dominated by women activists. Hence it is quite clear that women are the party needed the law and get advantage from its existence.

<sup>20</sup>*Ibid.*, article 3

women as the “susceptible group” that are prone of violence in the domestic sphere. In addition, the law was enacted as an answer for many women groups struggling intensively to endorse the bill.<sup>21</sup> Unsurprisingly, many women activists see the law as a remarkable development in gender discourse.

However, there are still some flaws of the law need to be criticized. One of them is that the law does not try to reconstruct traditional division of roles within household, hence it can not be categorized as a gender redistributive policy. Meanwhile, Connors explains that some governments have recognized that violence in household is an effect of the stereotypical roles for men and women that are socially constructed.<sup>22</sup> Instead of considering this aspect as a problem that must be addressed, the policy seems to me as rigid as the unjust division of roles.

The law stated that the rights and duties within household must be based on religion whilst religion itself has been variously interpreted.<sup>23</sup> Here, the law does not challenge the existing gender inequality within marriage whereas gender redistributive law aims at transforming the existing relation and aims at gaining equality between men and women. In fact, the statement can legitimate the continuation of traditional division of roles between husband and wife, the patriarchy culture, and roles expected to be performed by husband and wife which is influenced by mixed of culture and religious tradition. Unfortunately, so far, the interpretation of religious texts is male biased and this can be seen as one of factors or things that reinforce gender inequality.<sup>24</sup>

Another loophole of the law is in article 9 which prohibits anyone to neglect obligation of providing livelihood,

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<sup>21</sup>Liz Ercevik Amado, “Gender, Sexuality and Law Reforms in Muslim Societies”, in *Development Journal*, 49 (1), 2006, p. 97.

<sup>22</sup>Jane Connors, “Government Measures to Confront Violence Against Women”, in Davis Miranda, *Women and Violence: Realities and Responses Worldwide* (London: Zed books, 1997), p. 198.

<sup>23</sup>Law number 23 of year 2004, Elucidation

<sup>24</sup>Faiqoh, *Nyai: Agen Perubahan di Pesantren* (Jakarta: Kucica, 2003), p. 18-19, 83, 88; Lilik Zakiyah Munir, *Domestic Violence in Indonesia*, p. 3, 25.

treatment or care for individuals within household. Although the intention of this article is good; the explanation on the referred obligation is ambiguous. It is stated that the basis for this obligation is the law prevailing on him or her.<sup>25</sup> Meanwhile, the 1974 marriage law as well as the 1991 Compilation of Islamic law clearly defines men as a breadwinner and the wife as a manager in household.<sup>26</sup> Furthermore, it is regulated that wife's obligation is to manage the household affairs at her best and can be reported as *nushūz* (disobedient wife) if she fails to fulfill that.<sup>27</sup> So, the order of husband-wife roles will remain the same under this law.

### 1. Practical or strategic Gender Needs Coverage

In general, the law focuses on responding to practical gender needs. According to Moser, "Practical gender needs are the needs defined by women in their accepted socially role which are a response to immediate perceived need within a specific context".<sup>28</sup> The law focuses on such practical approach or solution like criminalizing the acts (which means giving legal protection for women in this matter), regulating the protection for victims including shelter, health care and social and spiritual mentor.<sup>29</sup>

I observe the legal solution is what government in many countries commonly sees as an urgent means to combat domestic violences. Connors said that most of governments use legal solution to confront the violence against women.<sup>30</sup> In my opinion, it is not a wrong strategy as long as combined with other measures such as efforts in religious texts interpretation or deconstructing gender biased traditions. In

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<sup>25</sup>Law no 23 of 2004 hapter 3 article 9

<sup>26</sup>Musdah Mulia, "Perlunya Revisi Undang-undang Perkawinan: Perspektif Islam", in *Jurnal Perempuan* vol. 49 (Jakarta, YJP, 2006), p. 79.

<sup>27</sup>Musdah Mulia, *Perlunya Revisi Undang-undang*, p. 79-81.

<sup>28</sup>Moser C., *Gender Planning and Development: Theory, Practice and Training (Practical and Strategic Needs and The role of State)* (New York: Routledge, 1993), p. 40.

<sup>29</sup>Law no 23 year 2004 chapter III,IV,V,VI,VII.

<sup>30</sup>Jane Connors, *Government Measures*, p. 183.



fact, the legalization of the act necessary for eradication of domestic violence in Indonesia because it gives a clear legal protection from the state that can be used by law enforcement agencies as a tool for dealing with this particular violence. Before the enactment of this law, the agencies usually prefer not to be involved in the case of violence that takes place in household or where the perpetrator is relative. They still perceive the cases as private matter because the state has not made their position clear yet.<sup>31</sup>

The regulation about shelter provision is also a practical gender need because it relates with inadequacies of temporary accommodation for victims. It is basic needs for human being similar with water and food provision. Practical gender needs indeed are often related to inadequacies in livelihood conditions.<sup>32</sup> Overall, I observe that law only addresses the failure to fulfil these basic and practical needs for of women as domestic violence cases without any further step like challenging the structure of gender relations. As Molyneux in Moser remark about practical gender needs; "They do not generally entail a strategic goal such as women's emancipation or gender equality...nor they challenge the prevailing forms of subordination even though they arise directly out of them".<sup>33</sup>

In particular, the law does not explicitly cover gender strategic needs that relate to elimination of the root of the problems. Gender strategic needs are the need identified because of women's subordination in the society whose goal is changing the existed roles to gain gender equality.<sup>34</sup> Actually, Moser place domestic violence as one of the issues that is covered in scope of strategic gender needs like other issues namely division of labor, equal wages between men and women. However, I argue that the way gender is incorporated in Indonesian law against domestic violence seems to meet

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<sup>31</sup><http://tempointeraktif.com>, accessed on 12 September 2006.

<sup>32</sup>Moser C., *Gender Planning and Development*, p. 41.

<sup>33</sup>*Ibid.*, p.40

<sup>34</sup>*Ibid.*, p.39

basic or practical gender needs rather than the strategic ones. The law does not try to challenge the patriarchal culture as one of the problem behind domestic violence nor providing long term solution like education for raising gender awareness or effort to reinterpret misogynist teaching of religion. As Munir said, despite the achievement of legalizing the law against domestic violence, a formidable challenge still exists within society and can not be ignored as a potential root of violence in household. Anthropological studies showed that Muslim's behavior in marriage is influenced by combination of patriarchal culture and religious points of view. She then asserted that the combination could create space for violence in household because of its tendency to legitimate husband's dominance and at the same time the obligation for wife to show obedience and submission.<sup>35</sup> The failure to perform such obedience could be argued as a reason for wife beating and it is often justified as a "lesson/corporal punishment for wife".<sup>36</sup>

From my point of view, although giving protection for victims and punishing perpetrator is necessary in solving domestic violence case, domestic violence is a complex problem and much more than legal solution is needed in eliminating it. I agree with Connors that calls for "the socioeconomic and cultural make-up of each community" beside the legal measures in order to eradicate domestic violence.<sup>37</sup> Without further and deeper looking at problems behind the domestic violence phenomenon, the eradication of violence in household would not be achieved.

Supardjaya, to give example, states that in spite of the law, the occurrence of domestic violence is still high.<sup>38</sup> In fact, the implementation of the law is hindered by some constraints. Since many Indonesian women still depend on their husband to support them, many women pose complaint

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<sup>35</sup>Lilik Zakiyah Munir, *Domestic Violence in Indonesia*, p.2

<sup>36</sup>More explanation on this matter will be given in next sub-chapter on "the law no 23 of 2004 regarding elimination on violence in household from Islam perspective"

<sup>37</sup>Jane Connor, *Government Measures*, p. 184.

<sup>38</sup>[Http://www.pikiranrakyat.com](http://www.pikiranrakyat.com), accessed on 12 September 2006.

about their economy during the report of their cases and lack of governments support worsen the condition and encourage them to withdraw the cases.<sup>39</sup> So, here the economic dependence is one of constraints in implementing the law and furthermore in combating domestic violence in Indonesia. In addition, although the law regulates shelter and support for victims, the aim and program is intended only on securing victims.<sup>40</sup> There is no particular measure that targets long run term security and future prevention of domestic violence through education and empowerment efforts.

From that point of view, I argue that the law tends to take the welfare approach by focusing on the safety and protection of victims or women rather than taking the empowerment approach by namely giving skill or job training so that women can be independent and self reliable in the future. In addition, the way law focuses on practical gender needs also indicates the use of welfare approach. Visvanthan explains that welfare approach tries to meet the practical gender needs and tend to see women as passive beneficiaries of development.<sup>41</sup> It does not challenge the prejudices or traditional stereotype about women role. In contrast, the empowerment approach aims at empowerig women through self independency. Young stated that the scope of welfare approach is malnutrition and maternity health, two things that are similar to protection and temporary dwelling.<sup>42</sup>

Fortunately, in order to prevent and solve economic dependence problem which is seen as one of causes of women's discrimination at home, the law already takes a step further by prohibiting anyone (usually husband) to limit women's right for work both inside and outside the house.<sup>43</sup> Still, I see that this regulation concerns only with the the issue of access for women and fails to consider seriously the

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<sup>39</sup>*Ibid.*

<sup>40</sup>Law no 23 of 2004 chapter VI & VII.

<sup>41</sup>Young K., "Gender and Development", in Vivasnathan, et. al., *The Women, Gender and Development Reader* (London: Zed Books, 1997), p. 56-57.

<sup>42</sup>*Ibid.*, p. 60.

<sup>43</sup>Law no 23 of 2004, chapter 3, article 9.

reconstruction of patriarchal family as a cause for gender inequality. In addition, there is case of domestic violence where the victim is economically independent.<sup>44</sup> Therefore, although economic dependence might be one factor, there is another factor behind violence against women. Here, I argue that the law lacks of gender analysis and simplify domestic violence problem solving trough welfare approach and giving access in employment. Naila Kabeer illustrates this kind of oversimplification in solving gender problem as "treating cancer with band aid".<sup>45</sup>

## 2. Assumptions on The Law: How Women and Men are Portrayed

As stated in the law, the enactment of this legislation is based on several considerations. First is that the occurrence of violence within household is a fact quite largely occurs in Indonesia. Second is that the existing laws, such as law number 1 of 1946 of Penal Code and its amendment, are not sufficient for guaranteeing protection of victims of domestic violence. Connors explains that in many countries, this particular violence has no clear and specific regulation, so here the case will be treated under the general regulation.<sup>46</sup> Before the enactment of the law No. 23/2004, many domestic violence cases in Indonesia are treated under the general law, and this has failed in practice.

Apart from that, it is important to see the way in which domestic violence is conceptualized because it influences the way law is drafted. It is important to see whether domestic violence is viewed as violence against women or as a gendered phenomenon or as a structural problem.<sup>47</sup> In my

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<sup>44</sup>See Lilik Zakiyah Munir, *Domestic Violence in Indonesia*, In case illustration about Lisa

<sup>45</sup>Naila Kabeer, Treating Cancer with Band Aid? Theoretical underpinnings of WID" Reversed Realities; Gender Hierarchies in Development Thought (London: Verso, 1994), p. 30.

<sup>46</sup>Jane Connors, *Government Measures*, p. 183.

<sup>47</sup>Sharon Bessell, *Gender and Policy*, Lecture, Session 11, ANU, 17 October 2006.

opinion, the law against domestic violence tends to use the first concept in analyzing domestic violence. This concept portrays women as victims or survivors of violence and tends to portray men's power over women as a cause of this problem.<sup>48</sup> The law stated clearly that victims of domestic violence in Indonesia are usually women.<sup>49</sup>

Seemingly, the law fails to consider violence against women as a gendered phenomenon. This concept, as defined by Anderson&Umberson, relates violence with the problem of unstable masculinity and considers violence as a cost to men.<sup>50</sup> From my point of view, the law does not see violence as a manifestation of masculine deficit. It is asserted in the law that domestic violence is caused by weak self control of men.<sup>51</sup> In this law, men are clearly portrayed as perpetrators or gender that is identical with violence but there is no further explanation about the reason behind this assumption. As Scourfield et. al explained, there are two approaches of viewing men, first is portraying men as perpetrators and second is portraying men as victims.<sup>52</sup> Mesner, as quoted by Scourfield, said that the first approach see men as "a source of danger and disorder" and emphasizes on the privileges of masculinity, while second approach see men as having disadvantages greater than women in society and it emphasizes the costs of masculinity.<sup>53</sup>

The law uses the first approach in portraying men and lacks of consideration of the second approach. It explains why the law does not consider providing counseling as a corrective treatment for abusive men like the Danish government's action plan to combat violence against women does. The Danish law involves men in the efforts to eliminate violence against women and consider men as having capability as well

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<sup>48</sup>*Ibid.*

<sup>49</sup>Law no 23 of 2004, consideration

<sup>50</sup>Sharon Bessell, *Gender and Policy*.

<sup>51</sup>Law no 23 of 2004, Elucidation.

<sup>52</sup>Scourfield and Drakeford, "New Labour and the problem of men", in *Critical Social Policy*, Volume 22, No. 4, 2002.

<sup>53</sup>*Ibid.*

as possibility to change.<sup>54</sup> The Danish law argues that efforts must be targeted on perpetrators in breaking the cycle of violence.<sup>55</sup>

The approach used by The Danish plan is appropriate because involving men is very relevant in combating domestic violence. Bradley, in reflection to the case in Papua New Guinea, also stated that programs in abolishing domestic violence must involved men.<sup>56</sup> Furthermore, she argues that “unless men change, women will continue to suffer”.<sup>57</sup> Here, the Indonesian law regarding elimination of domestic violence is missing this important strategy of involving men to combat domestic violence. The law lacks analysis that men have gender too, and that violence is mostly resulted from the risk of failure to perform the roles expected from society. As stated in UNFPA ; “ the social pressures to perform and codes of honour with which men and boys grow up can encourage them to compete, resort to violence or take sexual risks to demonstrate ‘manliness’ ”.<sup>58</sup> Therefore, a deeper understanding about the way in which men also pay a cost to masculinity is important in analyzing why men are violent and should be considered for drafting a gender aware law.

Instead of involving men trough counseling like the Danish law<sup>59</sup>, Indonesian law has set the effort on perpetrators in different way, as stated in chapter II, one of the purposes of the law is taking action against the perpetrator of violence in household. Interestingly, the following purpose is to maintain the intactness of harmonious and prosperous household<sup>60</sup>,

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<sup>54</sup>The Danish Government Action Plan to Combat Violence Against Women, 2002, p. 9.

<sup>55</sup>*Ibid.*, p. 16.

<sup>56</sup>Christine Bradley, “Why Male Violence Against Women is a Development Issue: Reflections from Papua New Guinea”, in Davis Miranda, *Women and Violence: Realities and Responses Worldwide* (London: Zed Books, 1997), p. 25.

<sup>57</sup>*Ibid.*

<sup>58</sup>UNFPA, State of The World’s Population Report 2005 Chapter 6 (Partnering with Men and Boys) section reinterpreting masculinity.

<sup>59</sup>The Danish Government, preface.

<sup>60</sup>The law no 23 of 2004, chapter II.

which is hard to be achieved if men are excluded from the program. In fact, if the focus of the law is merely on giving punishment as treatment on men (perpetrators). To some extent, it is hard to deny some accusation that the law might lead to divorce or separation of couple. Furthermore, this approach also will hinder the effectiveness of enforcement because many women will prefer to conceal the violence in their household to maintain the harmony of family.

### 3. Theoretical Underpinnings

From my point of view, the law is influenced mostly by liberal feminism. The basis of its enactment is the consideration that violence in household violates human rights and dignity as well as a form of discrimination against women.<sup>61</sup> In addition, chapter II of the law also repeats clearly that the principles of elimination of violence in household are respect for human rights, justice and gender equality and non-discrimination.<sup>62</sup> Enlightenment of liberal feminism is based on the belief in natural rights doctrine for human being, both men and women. Stanton, one of the great leaders of women's right movement in American nineteenth century, stated that "There are certain natural rights as inalienable to civilization as are the rights of air...", furthermore she asserted that since men and women are alike, they deserve equal rights.<sup>63</sup>

One of problems worked on by liberal feminism is the denial of women's civil rights. Here, the law is a giant step in recognizing women's rights as Indonesian citizens for legal protection from the state.<sup>64</sup> In addition, liberal feminism is concerned with women's exclusion from public sphere. Although it is not in explicit detail, the act which prohibits work access limitation for women (chapter III article 9) is in

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<sup>61</sup>The law no 23 of 2004, consideration.

<sup>62</sup>Law no 23 of 2004, chapter II, article 3.

<sup>63</sup>J. Donovan, "Enlightenment Liberal Feminism", (Chapter I), in *Feminist Theory: The Intellectual Traditions* (New York: Continuum, 2001), p. 33.

<sup>64</sup>Law no 23 of 2004, consideration.

line with that spirit. By prohibiting work limitation outside the house, the act gives access for women to be engaged in public life. However, the article does not focus on equality in giving opportunity.

Liberal feminism also rejects separation between public and private sphere and considers that realm of women's life also needs to be governed by law.<sup>65</sup> In line with that, the Vienna conference on women's rights formulate one fundamental statement; "the personal is the political", means that even the so called personal matter such as marriage and household is also about power relation that sometimes is unjust relation where one part has power on another party, and therefore needed to be governed by the law or state.<sup>66</sup> In case of the Indonesian Law, it is a breakthrough and a culture reform by "bringing the issues previously considered a taboo to the forefront of the public agenda".<sup>67</sup>

Contrary to liberal feminism, radical feminism influence is quite weak in this law. One argument is because radical feminism tends to take revolutionary breakthrough in effort to change present society<sup>68</sup> while the law is a relatively conservative plan. In addition, the law emphasizes religion as basis for rules within marriage while radical feminists see that religion is one of forces that lead to gender inequality. Another argument is that one of radical feminism goal is to end of tyranny of the biological family<sup>69</sup> which contradicts with one of the law purposes; to maintain the intactness of family.<sup>70</sup>

Actually, considering the nature of Indonesian society, minimizing radical feminism influence is it is a strategic decision. This is due to the fact that the Indonesian people will

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<sup>65</sup>Sharon Bessell, *Gender and Policy*, 25 August 2006.

<sup>66</sup>Musdah Mulia, *Muslimah Reformis*, p. 167.

<sup>67</sup>Liz Ercevik Amado, "Gender, Sexuality and Law Reforms in Muslims Societies", in *Development*, (2006).

<sup>68</sup>J. Donovan, *Enlightenment Liberal Feminism*, p. 160.

<sup>69</sup>J. Donovan, "Radical Feminism", in *Feminist Theory: The Intellectual Traditions* (New York: Continuum, 2001), p. 161.

<sup>70</sup>Law no 23 of 2004, principle and purpose.



on the contrary refute the law as it is seen as a violation to religion. John C. Raines said, "The plurality of the world's cultures requires a plurality of strategies to pursue gender justice within those cultures; proposals that work must be culturally specific."<sup>71</sup> In Indonesian society, religion (read Islam) is decisive factor in any effort to "pursue gender justice" in general and in either enhancing the law implementation or hindering it. How Islam views domestic violence in general and this new law will be discussed in the followings.

#### **D. The Law from Islam Perspective**

As mentioned above, one of the most important factors in efforts to eliminate domestic violence is religion, here means religion interpretation. Discourse on gender in Indonesia is, as in other countries, inseparable from a discussion of religion. Patricia Martin Doyle, quoted by Nuruzzaman says, "the debate on women and religion is the single most important and radical question for our time and the foreseeable future."<sup>72</sup> This is due to the fact that people's attitudes in their life especially in private matters including marriage, men-women relation is influenced mostly by their understanding on religion texts.<sup>73</sup> Therefore, it is important to see how Islam views violence on women and or in household.

Basically, Islam is a religion with liberating spirit for all human especially women and other weak and oppressed groups such as slaves and the poor. In fact, the final message from the Prophet he delivered in the Farewell pilgrimage in 10 H/631 before he passed away is an advice for Muslims to be careful and give good treatment to women and slaves, the weakest group of the society at the time. Regarding men-

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<sup>71</sup>John C. Raines, "Introduction", in John C. Raines and Daniel C. Maguire, *What men owe to women; men's voices from world religions* (State University of New York Press, 2001), p. 6.

<sup>72</sup>Husein Muhammad, *Islam Agama Ramah Perempuan: Pembelaan Kiai Pesantren* (Yogyakarta: LKIS, 2004), p. xiii.

<sup>73</sup>Lilik Zakiyah Munir, *Domestic Violence in Indonesia*, p. 2.

women relation or marriage matter in particular, Islam stresses that the goal of marriage is to establish the peaceful, loving and harmonious household, as stated in QC. al-Rūm (30): 21:

*"And among the signs of His power is that He creates for you wives from your own kind, so that you feel attracted to her and feel peacefull and He embeds love and caring between each other....."*

In addition, the prophet Muḥammad PBUHh himself also has become an excellent role model. There are many hadith portray how the prophet has showed good example in treating his family with good attitudes. The prophet was potrayed as a self-serving person when it comes to the household tasks; he was used to sew himself, participate in carrying the household tasks and states that helping wives in doing household task as shadaqah.<sup>74</sup> Furthermore, it is stated in one hadith that the best of Muhammad's ummah is the best one treating their family, and that he is the best one, (and hence is to be followed).<sup>75</sup>

On the other hand, religion (read Islam) is also used irresponsibly by some people as a justification for their discriminative or violent behavior towards women or their wives in particular. Admittedly, there are some texts used to defend their actions, among them is QC. al-Nisā' (4): 34:<sup>6</sup>

*"...As for those whom you fear may rebel (nushuz), admonish them and banish them to separate beds, and beat them..."*

Here, wrong and chauvinistic biased interpretation on religion teaching is one of the root for domestic violence or violence against women, in addition to traditional stereotype, gander biased childhood education etc.<sup>76</sup> The most popular interpretation of that verse is that, in *nushūz* case, husband is allowed to beat his wife for educational purpose. *Nushūz*,

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<sup>74</sup>Quraish Shihab, "Introductory Paper", in Nasaruddin Umar, *Argumen Kesetaraan Jender: Perspektif al-Qur'an* (Jakarta: Paramadina, 2001)

<sup>75</sup>Musdah Mulia, *Muslimah Reformis*, p. 168.

<sup>76</sup>*Ibid.*, p. 160.

literally means disobedience to the husband,<sup>77</sup> and includes many aspects such as refusing to serve husband sexually, going outside the house without husband's permission etc.<sup>78</sup>

The question then is, does Islam supports violence against women or in the household or in contrast, condemn it. In addition, is the law No. 23/2004 contradictory to Islam or otherwise? Certainly, Islam does not allow violence against women moreover support it. In addition, the law in general is in accordance with Islam as Islamic teaching forbids violence and warns the perpetrator with punishment and fine (*qisās* and *diyyah*).

### 1. Physical Violence

As briefly mentioned before, Islam, in particular the Qur'an al-Nisā' (4): 34 is commonly understood as permission, if not encouragement, for a husband to beat the wife in case of *nushūz*. Meanwhile, the word *ḍaraba* does not necessarily means beating as commonly understood. The word *ḍaraba* actually also has other meanings. The word is found in Qur'an 58 times in 28 chapters. The word is used for various meanings, among them for "giving example or setting example", "to educate", "to make", "to beat", "to kill", "to cut", "to explain", "to cover/include", "to make a trip".<sup>79</sup> According to Quraish Shihab, the word *ḍaraba* is used in Qur'an in meaning as beating both the hard and soft beating. The word *ḍaraba* also is used in meaning walking on their feet or stepping their foot, such as in QC. al-Nisā' (4): 101. It is also used in meaning making sounds playing trumpet or flute as that musical tool is tapped by the air from the person's mouth. The Qur'an also uses the word in meaning singing a song to someone's ears in order to help him/her sleeping (QC. al-

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<sup>77</sup>Jamāl al-Dīn Muḥammad Ibn Makram Ibn Manẓūr, *Lisān al-'Arab* (Beirut: Dār al-Fikr, 1990), p. 987.

<sup>78</sup>See Ratna Batara Munti et. al., *Posisi perempuan dalam hukum Islam di Indonesia* (Jakarta: LBH Apik, 2005), p. 90-94, see also Musdah Mulia, *Muslimah Reformis*, p. 164.

<sup>79</sup>Musdah Mulia, *Muslimah Reformis*, p. 165.

Kahf (18): 11). Another meaning of the word *dharaba* is to make an illustration or example, (QC. Ibrahim (14): 24). Here, Quraish Shihab suggests not interpreting the word *ḍaraba* in sentence *faḍribuhunna* as beating to cause suffering or injury on wife, moreover to see it as suggestion or a command instead as a last choice and is tied with several terms or conditions.<sup>80</sup> Interestingly, there is another distinctive opinion from some ulama namely Atha' that the husband is only allowed to take actions of the first two steps (giving advice and separating from their bed), while the third step (beating part) is the state or government's right.<sup>81</sup> This is based on one hadith said, "Noble people do not beat their wives."<sup>82</sup>

Even if we use the traditional interpretation of the verse (which is also the most popular one), the beating mentioned is tied with several terms. One of the conditions is that the wife has conducted *nushūz*.<sup>83</sup> If the beating were to happen, another regulation to be followed is that the beating should not cause any pain moreover results in wound (*ghair al-mubrah*). This means that it must not result in any fracture, must not leave any mark.<sup>84</sup> Third is that the beating must not be on the face, even though the soft one, as stated clearly in hadith as follows;

"...quoted from Abū Hurairah, from the prophet pbuh, *if (one of you) beat, avoid the face.*"<sup>85</sup>

As summed up by Husein Muhammad, the beating must not target the face, must not injure, should be soft beating using the lightest thing such as handkerchief, must be aimed at educational purpose, and that the act is believed to bring benefit in keeping the family and marriage intact and

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<sup>80</sup>Quraish Shihab, *Perempuan* (Tangerang: Lentera Hati, 2005), p. 291-292.

<sup>81</sup>Quraih Shihab, *Perempuan*, p. 295.

<sup>82</sup>*Ibid.*

<sup>83</sup>Jamāl al-Dīn, *Lisān al-'Arab*, p. 987.

<sup>84</sup>Muhammad al-Baltaj, *Makānāt al-Mar'ah fī al-Qur'ān al-Karīm wa al-Sunnah al-Ṣaḥīḥah* (Kairo: Maktab al-thabab, 1995), p. 152.

<sup>85</sup>Abū 'Abdillāh Muḥammad ibn Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Beirut: Dār al-Sa'bi, nd.), p. 244.

harmonious.<sup>86</sup> On the other hand, reality shows that the verse is used irresponsibly to justify beatings that, most of the times, are not in line with the terms previously explained, and therefore the law No. 23/2004 was enacted and needed significantly. The beating usually is without any legitimate reason (read *nushūz*, and after the two steps of advice and apart from wife's bed). More importantly, most cases show that the beating ends up to be physical violence which results in many horrible damages.

The law outlaws physical violence that causes pain, illness, and severe injury.<sup>87</sup> This includes boxing, beating using heavy stuff, bending wife's head against the wall, burning etc. In fact, the violence mentioned causes various horrible damage from wound, spontaneous abortion, physical defect to death.<sup>88</sup> Here, it is clear that the law is not contradictory to Islam as Islam never allows such violences. In fact, Islam also is very firm in protecting the life, the safety and the dignity of all human (not only women) as reflected in concept of *qīṣāṣ* and *diyyah*. Although, the law does not threat perpetrator of violence ending in death with capital punishment; it sets prison and/or fine as the maximum punishment. Still, as well explained by La Jamaa and Hadidjah, the spirit of the law is in line with Islam, and the concept used is *ta'zīr* (crimes whose punishment is resorted to wisdom of government or judge with consideration of common good).<sup>89</sup>

## 2. Psychological Violence

Islam ensures protection for women from psychological assault and does not tolerate this kind of violence. One argument is the fact that Islam does not only regulate material provision for the wives but also non-material (*bāṭiniyyah*) provision, which can be seen as psychological

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<sup>86</sup>Husen Muhammad, *Islam Agama Ramah Perempuan: Pembelaan Kiai Pesantren* (Yogyakarta: LKiS, 2004), p. 242.

<sup>87</sup>Law no 23 of 2004, article 5.

<sup>88</sup>La Jamaa, *Hukum Islam*, p. 71-71.

<sup>89</sup>*Ibid.*, p. 158.

area. Here, a husband is obliged to establish a good relation with the wife and is not allowed to hurt her as stated in the Qur'an al-Nisā' (4) :19. In fact, the verse also states that a husband should be patient when he found something unpleasant from his wife. It further asserts that he might not like it whilst Allah makes much goodness within it. In addition, a husband is prohibited to upset the wife, avoid her, make some distance from her without any legitimate reason. Even in case where the wife is believed to behave *nushūz*, Islam limits the period of a husband's separation from wife's bed.

In relation to the law which criminalizes mental assault, it can be argued that it is compatible with Islam by uquiting it with the concepts of *ilā'* and *dhihār*. Both *ilā'* and *dhihār* are phsycological violence in Islam and are subject to penalty. *Dhihār* is acknowledged as a kind of pshycolgical assault and is criticized in Qur'an (QC. al-Mujādilah (58): 1-6). In addition, the perpetrator is penalized by a prohibition to have sexual relation with the wife and with *kaffārah*; either set free a slave when possible or two moths fasting or feeding sixty poors in order to end the sanction.<sup>90</sup> *Kaffārah* can be analogysed as fine in positive law (here is the anti domestic violence law). Similarly, Islam sees *ilā'*, a husband's vow to refuse sexual relation with his wife without any legitimate reason, as another kind of phsycological violence and penalize the perpetrator with *kaffārah*.<sup>91</sup> Islam obliges a husband to fulfill the biological need of the wife and prohibit a husband from sexually abandoning her more than certain period of time because Islam sees sex as one of human basic needs and can not be neglected.<sup>92</sup>

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<sup>90</sup>See QC. al-Mujādilah (58): 1-6 and see also Sri Mulyati, "Kekerasan terhadap Istri dalam Rumah Tangga menurut Undang-Undang No. 23 Tahun 2004 dan Hukum Islam," in <http://idb4.wikispaces.com>, p. 41, accessed on 24 March 2009.

<sup>91</sup>La Jamaa, *Hukum Islam*, p. 118, and see Sri Mulyati, *Kekerasan terhadap Istri*, p. 41.

<sup>92</sup>*Ibid.*

### 3. Sexual Violence

Sexual violence is the most controversial issue within the law. It is highly debated during the drafting of the bill, the discussion process in the parliament, and is still contested after. Here I argue that, if we see the law's content, its scope, and the existing cases related to this, there is no contradiction between Islamic teaching and the law. Sexual violence mentioned by the law is forcing sexual intercourse against one person's wish, and it covers maid servants, children and other people in the household.<sup>93</sup> So, in cases where the victims are maid servants, children, step children, or other people living under one person's guardian, the law is actually crucial. Sexual violence to those people can be categorized as rape and/or incest. According to Islam, those actions are crimes (as it causes damage on a woman's dignity (*al-Intihā' 'alā ḥurmah al-nisā'*) and are warned by severe punishment; punishment for *zina* (adultery) at minimum and death penalty or *qisās* at maximum.<sup>94</sup> In addition, sexual violence mentioned by the law also covers sexual intercourse against one person's will within household for commercial purpose, which can be categorized as human trafficking.<sup>95</sup> So, there is no reason to refuse the law as it does not violate Islamic law.

Admittedly, the law also outlaws marital rape, that can be defined a husband's forcing his wife to have sexual intercourse against her will.<sup>96</sup> Here, the law tries to affirm a woman's right over her body regardless her status and counters a widely believed view that a wife is a sex provider for her husband.<sup>97</sup> The spirit is in line with Islam in term of respecting wife's dignity, and considers her as a free and

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<sup>93</sup>See again the law No. 23/2004, chapter 1, article 2.

<sup>94</sup>La Jamaa, *Hukum Islam*, p. 162-164.

<sup>95</sup>See discussion on this issue in Musdah Mulia, *Muslimah Reformis*.

<sup>96</sup>*Ibid.*, p. 171

<sup>97</sup>Faridatus Syuhada, *Tinjauan Hukum Islam*, p. 30, and see also Masdar F. Mas'udi, *Islam dan Hak-hak Reproduksi Perempuan* (Bandung: PT. Mizan Hazanah Ilmu-ilmu Islam, 1997), p. 112.

consent person.<sup>98</sup>In fact, a wife, according to fiqh, has the right to postpone sexual intercourse when there is a legitimate reason such as menstruation, illness or tiredness.<sup>99</sup> If the husband still insists on his will, then he has breached the principle *mu'āsharah bi al-ma'rūf*, and can be seen as a torture.<sup>100</sup> Moreover, Islam actually ensures the protection on wife's right in sexual relation within the marriage. A husband is not allowed to do *'azal* (coitus interruptus) without the wife's agreement as it can hinder the wife from having sexual pleasure. In addition, the Prophet also warns husband not to treat wife like animal in their sexual activity. Instead, a husband is adviced to begin sexual intercourse with foreplay, affection, flattering words, kissing etc.

From explanation above it is clear that Islam does not allow sexual violence especially in definition of the rape, incest or trafficking. Admittedly, one might argue that criminalizing a husband just because he forces his wife to have sexual intercourse is unacceptable. Still, this is not a reason to refute the law blatantly, considering that this is just one small part of the law's coverage. The law is needed since reality shows that most sexual violence cases are in forms of rape, incest, women trafficking, and/or sexual sadism that cause damage and defect on the victims.<sup>101</sup>

#### 4. Economic Violence

There are several points to argue that Islam does not allow economic violence. One of the most important evidence is that Islam ensures a guarantee on economic protection for wife and children in a family. A husband is obliged with material provision which includes many things namely house or residence, clothes, medicines, foods, etc.<sup>102</sup> Furthermore, a

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<sup>98</sup>Faridatus Syuhada, *Tinjauan Hukum Islam*, p. 30.

<sup>99</sup>Masdar F. Mas'udi, *Islam dan Hak-hak Reproduksi Perempuan*, p.113.

<sup>100</sup>Sri Mulyati, *Kekerasan terhadap Istri*, p. 44.

<sup>101</sup>See La Jamaa, *Hukum Islam*, p. 77-80.

<sup>102</sup>Muhammad Thalib, *Ketentuan Nafkah Istri dan Anak* (Bandung: PT. Irsyad Baitus Salam, 2000), h. 21-22.



husband should give his best in this matter as asserted in term "*bi al-ma'ruf*" (QC. al-Baqarah (2): 233). More clear evidence is found in 65:6 which warns the husband not to intentionally cause any sorrow or difficulty on the wife part in providing material provision. In fact, the Prophet allows wife to take rational amount from the husband's pocket if he does not give proper *nafaqah* as illustrated in case of Hindun bint 'Utbah and Sufyan.<sup>103</sup>

Another point to be noted is that Islam also regulates economic protection for women after the termination of the marriage, which is known as *mut'ah* and *'iddah*. Islam is very firm in protecting women's economic rights; a husband is considered indebted if he fails to fulfill the obligation of material provision and *mahr* (dowry). In addition, Islam prohibits a husband to take back the *mahr* given to the wife and categorizes it as serious sin.<sup>104</sup> This prohibition also shows Islam's stance on economic exploitation.

In short, violence against women in all kinds is a violation to Islamic teaching. Contrary to some negative assumption saying that Islam opens the space for violence against women, it actually took the front line in combating "at least six forms of acts" of violences suffered by women of Pre-Islamic Arabia. Lilik Zakiyah Munir<sup>105</sup> explains those violences as; female infanticide and burying girls alive (QC. al-Takwīr (81): 8-9); beating a women (QC. al-Nisā' (4): 30); divorcing a woman when she gets old (QC. al-Mujādilah (58): 2); expelling women from home (QC. al-Ṭalāq (65): 1); Making women's life miserable or cause them suffering (QC. al-Ṭalāq (65): 6); and complicating a woman's life (QC. al-Baqarah (2): 236).

## E. Conclusion

In conclusion, the law No. 23/2004 regarding elimination of violence in household outlaws violence in

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<sup>103</sup>La Jamaa, *Hukum Islam*, p. 114-115.

<sup>104</sup>*Ibid.*, p. 109.

<sup>105</sup>Lilik Zakiyah Munir, *Domestic Violence in Indonesia*, p. 21.

private sphere and regulates the needed facilities for the victims. Although the law is undoubtedly seen as a victory for women activists struggling over its enactment, the law does have several weaknesses. The fact that the law does not try to reconstruct gender biased roles division between husband and wife is one biggest flaw. It, to some extent, brings some ambigiuosity in the law. Nevertheless, the law is a positive development in the struggles to pursue justice for women and other susceptible groups within the household. From Islamic perspective, the law in general does not violate Islamic teaching. Islam is a religion with universal principles such as justice, protection of human dignity and egalitarianism. In fact, Islam has made a breakthourgh at the time it was revealed by condemning many kinds of violence suffered by women in Arab such as burying female baby alive, a kind of violence which was prevalent before Islam. Islam also criminalizes violence and threatens the perpetrators with penalty. Lastly, although the law No. 23/2004 regarding elimination of violence in household is significant measures in abolishing domestic violence, a more comprehensive efforts including socialization of more gender-just interpretation of religion texts in the society is necessary.

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