

Domestic Violence and Women's Protection in Indonesian Islamic Family Law: A Postcolonial Perspective

Dede Al Mustaqim¹ 

Haryadi Eka Nugraha^{2*}

Abstract:

Domestic violence against women within Indonesian Islamic family law remains a structural problem reflecting the gap between Islamic normative ideals and legal practice shaped by colonial legacy and patriarchal bias. This article examines domestic violence and women's protection in Islamic family law through a postcolonial lens, analyzing primary legal materials, classical fiqh texts, and religious court decisions. Findings show that violence is frequently displaced from a serious rights violation into ordinary domestic discord, leaving legal protection for women survivors structurally inadequate. The nusyuz category and the marital-breakdown threshold in the Compilation of Islamic Law cause violence claims to be unregistered as independent harm. This is traced to the colonial-era codification of Islamic law and a state prioritizing family stability over women's safety. The article argues for decolonizing Islamic family law thought, reinterpreting qiwamah as ethical responsibility grounded in maqashid al-shari'ah, and strengthening the state's role as protector of women's rights. Legislative, institutional, and interpretive reforms are necessary for Islamic family law to function as an instrument of substantive justice and effective protection for survivors.

Keywords: Domestic Violence; Islamic Family Law; Postcolonial Theory

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Introduction

Domestic violence against women remains one of the most persistent and deeply embedded problems confronting contemporary Muslim families. Although Islamic normative teachings consistently uphold justice, compassion, mutual respect, and human dignity, the lived experience of many women within Muslim households continues to be

¹ Master of Islamic Family Law, Graduate School of Universitas Islam Negeri Siber Syekh Nurjati Cirebon, Indonesia. E-mail: dedealmustaqim@mail.syekhnurjati.ac.id

² Master of Islamic Family Law, Graduate School of Universitas Islam Negeri Siber Syekh Nurjati Cirebon, Indonesia. *Correspondence E-mail: haryadi.eknug@gmail.com

marked by physical, psychological, sexual, and economic violence. This contradiction is not incidental. It reflects a wider tension between the ethical ideals of Islam and the social, legal, and institutional arrangements through which Muslim family life is governed. In Indonesia, the world's largest Muslim-majority country, this tension is particularly visible because family law is not merely a matter of private religious observance but a domain of state regulation, judicial administration, and public policy. The family, which is normatively imagined as a site of protection, moral formation, and emotional security, can simultaneously become the space in which women are most vulnerable to harm. Understanding domestic violence therefore requires moving beyond explanations that treat it as an individual moral failure or an ordinary domestic dispute.³ It demands an examination of the structural conditions legal, historical, and ideological that shape how violence is recognized, interpreted, and addressed.

In Indonesia, the legal framework ostensibly provides several layers of protection against domestic violence. Law No. 23 of 2004 on the Elimination of Domestic Violence defines domestic violence broadly, encompassing physical, psychological, sexual, and economic harm, including threats, coercion, and neglect of domestic obligations. At the level of family law, Law No. 1 of 1974 on Marriage obliges spouses to love, respect, and support one another, while the Compilation of Islamic Law recognizes cruelty, serious mistreatment, and continuous marital discord as grounds for divorce. On paper, therefore, the normative architecture appears reasonably protective. Yet a serious gap separates these legal provisions from their application in practice.⁴ The existence of protective norms does not automatically guarantee protection, especially when the institutions responsible for interpreting and applying those norms operate within deeply entrenched interpretive traditions that may not be designed to recognize violence as an independent legal harm. This gap between the law in books and the law in action is central to any serious analysis of women's protection in Indonesian Islamic family law.

³ M. F. Alawi, "Artikulasi Hasrat Berpasangan Dengan Laki-Laki Kulit Putih Di Kalangan Perempuan Indonesia: Pembacaan Poskolonial Pada Weblog Desisachiko. Com," *Al-I'lam: Jurnal Komunikasi Dan Penyiaran Islam* 3, no. 2 (2020): 61–74.

⁴ RIZKI HM ARFAN, "Konseling Keluarga Untuk Mengatasi Kekerasan Dalam Rumah Tangga (Kdrt) Di Uptd Ppa Kabupaten Lampung Utara" (PhD Thesis, UIN RADEN INTAN LAMPUNG, 2026), <https://repository.radenintan.ac.id/44012/>.

The religious courts occupy a particularly important position in this context. For the overwhelming majority of Indonesian Muslim women, the first and often only legal institution that formally encounters their experience of domestic violence is not a criminal court applying the domestic violence statute but a religious court applying the Compilation of Islamic Law and general marriage law. National records consistently show that gender-based violence remains widespread, with the majority of reported cases occurring within the domestic sphere and reaching religious courts primarily through divorce proceedings. This institutional concentration means that the interpretive categories used by religious court judges have direct and material consequences for women's access to protection, maintenance, and physical safety.⁵ When domestic violence is misrecognized as ordinary marital discord, the legal system not only fails to respond adequately but also reinforces the broader social perception that violence within the family is a private matter rather than a serious violation of rights.

A key source of this interpretive gap lies in the enduring influence of classical fiqh categories, particularly the doctrine of nusyuz, or disobedience. In classical legal reasoning, nusyuz is oriented primarily toward the wife's conduct and marital obedience, rather than toward the husband's conduct as a potential source of harm requiring restraint. While classical fiqh did not explicitly condone abuse, its dominant analytical framework was not designed to register violence as a self-standing wrong in the way modern rights-based legislation does.⁶ This structural mismatch helps explain why domestic violence claims in religious court practice are so often absorbed into broader inquiries about marital breakdown or reframed through the vocabulary of nusyuz. The result is that women's testimony of harm is translated into categories the legal system is already prepared to hear, rather than categories capable of registering the harm on its own terms. The experience of violence thus becomes legally legible only through a

⁵ Rahimal Khair and Hidia Tarauni, "Dominasi Patriarki Dan Marginalisasi Tokoh Perempuan Subaltern Dalam Novel Laili Wa Daulat Karya Najib Al-Kailani," *Lingua Franca* 4, no. 1 (2025): 112–30.

⁶ Nanang Martono, *Sosiologi Perubahan Sosial: Perspektif Klasik, Modern, Posmodern, Dan Poskolonial (Sampel Halaman)* (RajaGrafindo Persada Jakarta, 2012), https://books.google.com/books?hl=id&lr=&id=6lt1BgAAQBAJ&oi=fnd&pg=PR19&dq=Kekerasan+Dalam+Rumah+Tangga%3B+Hukum+Keluarga+Islam%3B+Poskolonial&ots=yG2hZEOMdw&sig=mQK7dWO7_nsSw2vIUyIMZrRXZmY.

framework that ultimately centers marital fault and family stability rather than survivor safety.

This problem is further complicated by the doctrine of *qiwamah*, which articulates the husband's leadership role within the family. Although *qiwamah* can be interpreted as a form of ethical responsibility and protection, it is frequently read literally as legitimizing male superiority and hierarchical authority. In some traditional interpretations, this reading has been used to justify coercive control and even physical chastisement. The Qur'anic term *daraba*, often invoked as a normative justification for violence, has been subjected to intense interpretive debate. Contextual and gender-justice-oriented readings insist that the verse must be understood within the Qur'an's overarching ethical trajectory toward justice, compassion, and non-violence. Such readings challenge patriarchal interpretations that neglect the principle of gender justice at the core of Islamic teaching.⁷ They also open space for a reinterpretation of *qiwamah* as a duty of care rather than a license for domination, and for a reconstruction of spousal relations on the basis of mutual respect, dignity, and substantive justice.

These interpretive struggles cannot be fully understood without attention to their historical formation. A postcolonial reading of Islamic family law requires a concrete legal-historical genealogy connecting present-day doctrine to its colonial formation. During the Dutch colonial period, two competing theories governed how Islamic law was recognized within the colonial legal order. The earlier theory of *receptio in complexu* held that Muslims were bound in full by Islamic law as a comprehensive legal system. This was later displaced by the *receptie* theory, which held that Islamic law possessed legal force only insofar as it had been absorbed into local customary law.⁸ This formulation granted the colonial state, rather than Islamic legal authority itself, the power to determine when and how Islamic norms would be recognized. Through a sequence of colonial legal instruments, Islamic law was progressively reconstituted from a flexible,

⁷ Ali Mustofa, Muharsyam Dwi Anantama, and Irma Bela Oktaviana, *Poskolonial: Teori Dan Praktik Diskriminasi Dalam Sastra* (Selat Media, 2024), <https://books.google.com/books?hl=id&lr=&id=cbgfEQAAQBAJ&oi=fnd&pg=PA1&dq=Kekerasan+Dalam+Rumah+Tangga%3B+Hukum+Keluarga+Islam%3B+Poskolonial&ots=iJZ0FnQ7Ej&sig=grTuFHfkpr1a-ftSeXArSXol3wQ>.

⁸ Muhamad Khoiri Ridlwan, "Kekerasan Dalam Rumah Tangga: Analisis Ketentuan UU PKDRT, Al-Qur'an Dan Hadits Tentang Nushūz" (PhD Thesis, Universitas Islam Negeri Maulana Malik Ibrahim, 2014), <http://etheses.uin-malang.ac.id/3176/>.

jurist-driven ethical reasoning into a fixed, state-administered legal category. Codification did not simply record existing Islamic law; it transmuted it, stripping away its internal tradition of interpretive debate as it was absorbed into the rigid apparatus of state law.

This colonial legacy did not end with independence. It was carried forward, in transformed guise, into the postcolonial Indonesian state's own project of family-law unification. Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law of 1991 represent a continuation of the same codificatory logic: the reduction of plural, locally negotiated fiqh interpretation into a single, state-sanctioned legal text. The postcolonial state thus inherited not only the colonial apparatus of legal codification but also its underlying logic of subordinating religious-legal plurality to administrative uniformity and social order.⁹ This continuity suggests that the decolonization of Indonesian Islamic family law remains structurally incomplete. Formal colonial rule ended, but the codificatory episteme it installed persisted largely unexamined within the very instruments that now govern how domestic violence claims are adjudicated. The state, through the religious judiciary, continues to exercise substantial authority in determining whether women's experience of violence is recognized as a legitimate basis for legal protection.

From a postcolonial perspective, Islamic family law is therefore understood not merely as a normative religious product but as the outcome of a historical process entangled with colonialism, state modernization, and patriarchal power relations. The weakness of protection afforded to domestic violence survivors is attributable not only to gaps in the letter of the law but to a legal structure that, from its very inception, was not designed to fully accommodate women's experience as legal subjects. Postcolonial theory introduces the concept of the subaltern: a group marginalized from, and without access to voice within, dominant structures of power. Domestic violence survivors often occupy precisely this position within Islamic family law.¹⁰ Their experience of violence is rarely fully articulated in the law's own vocabulary; law speaks in the idiom of the state

⁹ Cindy Sari, Yedi Permana, and Clara Dewi, "Perempuan Dan Agensi: Analisis Feminisme Poskolonial Atas Pekerja Seks Perempuan Di Danau Tempe," *JURNAL DURA NEGARA* 1, no. 1 (2026), <https://ejournal2.unud.ac.id/index.php/duranegara/article/view/1119>.

¹⁰ Edy Suprayitno et al., "Diskriminasi Gender Dalam Perspektif Feminisme Postkolonial Pada Novel Nyai Gowok Karya Budi Sardjono," *PERSEPTIF: Jurnal Ilmu Sosial Dan Humaniora* 4, no. 3 (2026): 424–35.

and its institutions, while women's experience is routinely reduced to the emotional, the domestic, or even to personal fault. A wife's account of domestic violence is rarely disputed outright as false; rather, it is treated as legally insufficient on its own terms, subordinated to the higher threshold of proven marital breakdown, or reframed through the vocabulary of *nusyuz*. In such patterns, the court's institutional vocabulary effectively translates women's testimony of harm into categories the legal system is already prepared to hear, rather than categories capable of registering the harm on its own terms.¹¹

This dynamic reveals how state power over the institutional determination of what counts as protectable harm is equally decisive. In postcolonial Muslim-majority states, Islamic family law has been codified and institutionalized within the framework of the modern state's legal system. This codification process frequently transforms Islamic law from a flexible ethical system into a rigid legal-formal apparatus. Law thus functions more as an instrument of social control than as a mechanism of protection for vulnerable groups, including women survivors of violence.¹² The state, through the institution of the religious judiciary, holds substantial authority in determining whether women's experience of violence is recognized as a legitimate basis for legal protection. Yet in practice, the state frequently prioritizes family stability and social order. Protection for domestic violence survivors becomes subordinate to the interest of preserving the family institution. This condition can be described as institutionalized state patriarchy: a configuration in which the state reproduces patriarchal values under the guise of legal neutrality and the public interest.¹³

Existing scholarship has made important contributions to understanding these problems, but it has not yet fully bridged the gap between doctrinal analysis, empirical judicial practice, and postcolonial critique. Some studies examine victim protection through *maqasid al-shari'ah*, offering valuable normative justifications for statutory

¹¹ Christin Amelia Susanti, Tony Tampake, and Mariska Lauterboom, "Peran Islam Dalam Membangun Advokasi Anti Kekerasan Terhadap Perempuan Di Indonesia," *MOMENTUM: Jurnal Sosial Dan Keagamaan* 14, no. 1 (2025): 30–45.

¹² Izzahtu Nuha Zahra'ni, Dini Salima Albar, and Dwi Susanto, "Kajian Feminisme Poskolonial Pada Tokoh Firdaus Dalam Novel Perempuan Di Titik Nol," *Ruang Kata* 5, no. 02 (2025): 243–56.

¹³ SOKHIB ADAM, "Gerakan Ulama Perempuan Indonesia Dalam Perspektif Feminisme: Studi Pada KUPI (Kongres Ulama Perempuan Indonesia)" (PhD Thesis, UIN RADEN INTAN LAMPUNG, 2025), <https://repository.radenintan.ac.id/38874/>.

protection but stopping short of examining how religious courts actually apply or fail to apply that protection. Others compare national law and Islamic law approaches to domestic violence, providing useful doctrinal mapping but without engaging the historical formation of that overlap or its colonial genealogy. Still others examine criminal sanctions, gender-sensitive adjudication, or mediation practices, contributing important dimensions that complement but do not substitute for a family-law-focused, postcolonial analysis. What remains missing is a study that combines a postcolonial theoretical framework applied directly to statutory text, classical fiqh, and case law; an explicit historical genealogy tracing the colonial-era origins of the codified family-law system; and direct analysis of concrete religious court decisions rather than doctrinal generalization alone.¹⁴

This article responds to that gap. It examines domestic violence and women's protection in Indonesian Islamic family law through a postcolonial lens, aiming to expose the power relations, patriarchal bias, and colonial legacies that shape the formation and practice of family law, without altering the normative commitments Islam itself articulates. It analyzes primary legal materials, classical fiqh texts, religious court decisions, and recent scholarship. Its central argument is that domestic violence is frequently displaced from the register of serious rights violations into that of ordinary domestic discord, leaving legal protection for women survivors structurally inadequate. Read through a postcolonial lens, this displacement is traced to the colonial-era codification of Islamic law and to a state that privileges family stability over women's safety. Accordingly, the article argues for the decolonization of Islamic family law thought, the reinterpretation of spousal relations on the basis of *maqashid al-shari'ah* and gender justice, and the strengthening of the state's role as protector of women's rights. Only through such a holistic and transformative approach can Islamic family law function as an instrument of substantive justice and effective protection for women survivors of domestic violence.

Methods

¹⁴ Robiatul Adawiyah, "Kekerasan Dalam Implementasi Keluarga Berencana (KB) Terhadap Perempuan Dalam Perspektif Islam," *Al-'Adl* 12, no. 1 (2019): 45–63.

This study employs normative legal research focused on the norms, principles, and doctrines governing domestic violence and women's protection within Indonesian Islamic family law.¹⁵ Methodologically, it follows the established typology of normative legal research, combining statutory, conceptual, and case-based approaches. Postcolonial theory is not treated as a separate methodological approach displacing doctrinal analysis, but as a critical interpretive lens layered onto the conceptual approach. The analysis proceeds in two stages. First, doctrinal analysis identifies the applicable legal norms Law No. 23 of 2004 on the Elimination of Domestic Violence, Law No. 1 of 1974 on Marriage, and the Compilation of Islamic Law and examines how these norms have been applied in religious court practice. Second, postcolonial theory interrogates why these norms take their particular form, whose interests they encode, and how colonial-era codification and state-centered legal administration continue to shape their interpretation. Primary legal materials include statutory texts, classical fiqh references, and recent religious court decisions. Secondary materials comprise peer-reviewed scholarship on Islamic family law, gender justice, and postcolonial legal theory. The study is qualitative and library-based, relying on documentary analysis rather than fieldwork or statistical generalization. This two-step design keeps the inquiry anchored in verifiable legal sources while enabling a critical, genealogical examination of the power relations and patriarchal assumptions embedded in Indonesian Islamic family law.

Result and Discussion

1. The Normative-Interpretive Gap in the Adjudication of Domestic Violence

The scale of domestic violence documented in national records is not merely a statistical backdrop to the study of Islamic family law; it is itself a legal-institutional artifact that reveals how the state apparatus encounters and processes women's experiences of harm. National data consistently show that gender-based violence remains widespread across Indonesia, with the overwhelming majority of reported cases occurring within the personal or domestic sphere and reaching the legal system primarily through court rulings, most of which are divorce decisions issued by religious courts. This distribution is highly significant. It means that for most Indonesian Muslim women, the first and often only legal institution that formally encounters their experience of

¹⁵ Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2021).

domestic violence is not a criminal court applying the domestic violence statute, but a religious court applying the Compilation of Islamic Law and general marriage law.¹⁶ Statutory protection thus converges, in practice, on a single institutional bottleneck. The interpretive categories through which religious court judges, legislators, and society understand domestic violence are therefore not a marginal doctrinal question but a matter of urgent practical consequence for millions of Muslim women. Examining why these categories persist, and where they originate, is essential both to legal scholarship and to the practical project of judicial and legislative reform.¹⁷

The domestic violence statute itself offers an expansive, survivor-centered definition of the harm it seeks to address. It defines domestic violence broadly as any act against a person, mostly women, that results in physical, sexual, or psychological suffering and neglect of domestic obligations, including the threat of such acts, coercion, or unlawful deprivation of liberty within the household. The statute further enumerates four recognized forms of abuse: physical, psychological, sexual, and economic. Crucially, it explicitly recognizes neglect of domestic obligations and threats of violence as actionable harms in themselves, independent of any finding about the overall state of the marriage. The legislative logic is thus rights-based: violence is treated as a distinct violation warranting protection and legal remedy, and the survivor's safety is positioned at the center of the legal inquiry.¹⁸ This is a significant normative achievement, reflecting decades of feminist legal advocacy and a growing recognition that violence within the family is not a private matter but a public wrong.

By contrast, the family law provisions that govern divorce in religious courts adopt a markedly different logic. The Compilation of Islamic Law permits divorce where one party commits cruelty or serious mistreatment endangering the other party, a formulation that imports a severity threshold absent from the domestic violence statute's own definition. More importantly, it situates the harm within an inquiry into whether the

¹⁶ Wely Dozan, "Fakta Poligami Sebagai Bentuk Kekerasan Terhadap Perempuan: Kajian Lintasan Tafsir Dan Isu Gender," *An-Nisa* 13, no. 1 (2020): 739–49.

¹⁷ Bambang Aris Kartika, "Eksplorasi Concubinage Dan Subjek Subaltern: Hegemoni Atas Perempuan Indonesia Dalam Tinjauan Kritis Pascakolonial Dan Feminisme Novel De Winst Karya Afifah Afra," *ATAVISME* 14, no. 1 (2011): 51–64.

¹⁸ Umi Khusnul Khatimah, "Hubungan Seksual Suami-Istri Dalam Perspektif Gender Dan Hukum Islam," *AHKAM: Jurnal Ilmu Syariah* 13, no. 2 (2013), https://www.academia.edu/download/79390270/Umi_20Khusnul_20Khatimah.pdf.

marriage as a whole has broken down. The same compilation also recognizes continuous discord without hope of reconciliation as a valid ground for divorce. The result is that violence is not treated as a self-standing wrong but as evidence within a broader assessment of marital viability.¹⁹ Rather than treating the domestic violence statute and the Compilation of Islamic Law as complementary, mutually reinforcing instruments, judicial practice effectively subordinates the former's rights-based logic to the latter's marital-continuity logic. This is a doctrinal illustration of the disjuncture between the law in books and the law in action. On paper, the framework appears reasonably protective; in practice, the interpretive gap between a statute that defines domestic violence expansively as a rights violation and a family-law provision that subsumes the same conduct under a marital-breakdown inquiry explains why domestic violence claims are so often absorbed into and subordinated by a broader inquiry into whether the marriage as a whole has broken down.

This interpretive gap is not an accident of poor drafting or judicial indifference. It is rooted in the conceptual architecture of classical fiqh, which continues to inform judicial reasoning in religious courts. The position of domestic violence within classical Islamic marriage law is rarely formulated explicitly, and where it is addressed, it is typically absorbed into the doctrine of *nushuz*, a category oriented primarily toward a wife's obedience rather than toward violence as an independent wrong.²⁰ Foundational Hanbali and Hanafi reference works situate the wife's obligation of obedience as something ordained by God and define *nushuz* principally as a wife's departure from the marital home without permission or valid religious justification. Read together, these classical formulations representing two distinct madhhab traditions illustrate that classical fiqh's dominant analytical category for marital discord was built around the wife's conduct as the object of regulation, not around the husband's conduct as a potential source of harm requiring restraint. This is not to say that classical fiqh condoned abuse; it demonstrates that the conceptual architecture inherited by contemporary Islamic family law was

¹⁹ DINA DATU PAONGANAN, *Perempuan Menolak Diam*, n.d., accessed September 26, 2026, http://repository.ukdw.ac.id/9814/1/50200090_bab1_bab5_daftar pustaka.pdf.

²⁰ A. Noer Chalifah Ramadhany et al., *Sosiologi Keluarga Multikultural: Keberagaman, Konflik, Dan Integrasi Sosial* (Star Digital Publishing, 2025), <https://books.google.com/books?hl=id&lr=&id=7SuaEQAAQBAJ&oi=fnd&pg=PA74&dq=Kekerasan+Dala m+Rumah+Tangga%3B+Hukum+Keluarga+Islam%3B+Poskolonial&ots=YKl9ms5O8t&sig=TIhxlH7xM44DNZebD1M-E-Dh1w>.

simply not designed to register violence-as-harm in the way the domestic violence statute's rights-based framework does. This structural mismatch helps explain, without excusing, the interpretive gap identified above.

The most consequential site of this mismatch is the *qiwamah* doctrine, which articulates the husband's leadership. The Qur'anic verse stating that men are *qawwamun* over women is frequently read literally as legitimizing male superiority, and some traditional interpretations understand *qiwamah* as an authoritative right permitting the husband to control his wife, including through coercive means. Yet the Prophet Muhammad explicitly modeled a domestic relationship free of violence; in a well-known hadith, he declared that the best among men are those who treat their wives best. Domestic violence constitutes a form of *zulm*, or injustice, fundamentally at odds with the spirit of *shari'ah*, which is oriented toward justice and compassion. Patriarchal bias in the interpretation of religious texts is a principal factor that risks legitimizing violence. The word *daraba* in the same Qur'anic verse is often invoked as normative justification for physical chastisement of a wife. Yet Amina Wadud, in her landmark rereading of the Qur'an from a woman's interpretive standpoint, argues that *daraba* must be read functionally and ethically, emphasizing non-violent resolution of marital discord rather than as a literal license for violence, and that the term *qanita* in the same verse describes righteous conduct in general rather than unconditional obedience to the husband. Fazlur Rahman likewise insists that verses addressing gender relations must be read in context against the Qur'an's overarching ethical trajectory toward justice, rather than in textual isolation. According to Wadud, patriarchal interpretation has neglected the principle of gender justice that lies at the very core of Islamic teaching.²¹

The tension between Islamic normative ideals and the practice of Islamic family law regarding domestic violence can be summarized analytically. Islamic family law is ideally constructed to realize welfare, tranquility, and a relationship grounded in mutual love and compassion, and is understood in Islamic teaching as built upon principles of justice, love, and respect for human dignity. The marital relationship is positioned as *mitsaqan ghalizha*, a solemn and dignified covenant. The Qur'an affirms that the purpose of marriage is the attainment of tranquility and affection, not domination or violence. Imam

²¹ Rit Ritawati, "Pemikiran Fatima Mernissi (1940-2015) Tentang Pengembangan Masyarakat Islam Dalam Perspektif Gender" (PhD Thesis, Pascasarjana Doctor, 2019), <https://repository.radenintan.ac.id/6989/>.

al-Ghazali held that marriage constitutes an ethical space demanding noble character, patience, and mutual respect between spouses. Every form of violence, physical or otherwise, therefore stands in genuine tension with the foundational objectives of Islamic law, particularly the protection of life and honor.²² Yet in social practice, the relationship between husband and wife frequently exhibits an imbalance of power that opens space for violence against women. Domestic violence does not emerge spontaneously; it manifests a lopsided structure of familial relations in which the husband's authority is often understood hierarchically and as near-absolute. *Qiwamah*, ideally a form of responsibility and protection, is interpreted as hierarchical authority. The husband-wife relationship, ideally characterized by *mawaddah wa rahmah*, is marked by power relations and subordination. The prohibition of injustice, ideally absolute, coexists with the frequent normalization of violence. Women's protection, ideally grounded in justice and dignity, remains legally weak.²³

The table of normative ideals and practice indicates a serious gap between Islamic normative values and the practice of Islamic family law operative in society. Domestic violence is frequently treated as a private domestic matter rather than a legal violation and a violation of women's fundamental rights. In many cases, women survivors of domestic violence are instead urged to be patient, to reconcile, or to preserve the marriage, without adequate guarantee of protection. This shows that Islamic family law has not yet fully functioned as a protective legal system for survivors. The physical and psychological toll of this disjuncture on survivors, documented in recent clinical-legal scholarship on post-traumatic stress among abused wives, underscores that the interpretive gap identified here is not a merely doctrinal curiosity but a matter with direct bearing on women's health and safety. Reading Islamic family law's treatment of domestic violence therefore requires the courage to critique patriarchal interpretation and biased legal practice: violence must no longer be understood as a natural consequence of the husband's leadership, but as a form of injustice that must be

²² Rapika Sabila, Tato Nuryanto, and Nurhannah Widiati, "Kekerasan Terhadap Tokoh Perempuan Dalam Novel 'Lebih Putih Dariku' Karya Dido Michielsen," *Equalita: Jurnal Studi Gender Dan Anak* 7, no. 2 (2025): 291–308.

²³ Riskyanti Juniver Siburian, "Menggeser Paradigma Kontra Terhadap Kriminalisasi Pemerkosaan Dalam Rumah Tangga," *Lambung Mangkurat Law Journal* 5, no. 1 (2020): 58–74.

prevented and sanctioned. The normative commitment of Islam to justice, compassion, and human dignity demands nothing less.

2. Colonial Genealogies, Subaltern Silencing, and the Decolonization of Qiwamah

A postcolonial reading of Islamic family law cannot remain at the level of abstract theoretical framing; it requires a concrete legal-historical genealogy connecting present-day doctrine to its colonial formation. During the Dutch colonial period, two competing theories governed how Islamic law was to be recognized within the colonial legal order. The earlier theory, *receptio in complexu*, held that a Muslim who pronounced the *shahada* was thereby bound in full by Islamic law as a comprehensive legal system. This theory was subsequently displaced by Christiaan Snouck Hurgronje's rival *receptie* theory, which held that Islamic law possessed legal force only insofar as it had been absorbed into local *adat*, or customary law. This formulation granted the colonial state, rather than Islamic legal authority itself, the power to determine when and how Islamic norms would be recognized. The theoretical shift was not a neutral intellectual development; it was a strategic reorganization of legal authority that placed the colonial administration at the center of religious legal recognition.²⁴

This theoretical shift was operationalized through a sequence of *Staatsblad*-era instruments, beginning with the *Compendium Freijer* of 1760 and culminating in the *Regeeringsreglement* of 1854, whose provisions authorized *adat* and religious dispute resolution under the colonial administration's ultimate supervisory authority, and later the *Indische Staatsregeling* of 1925, which further entrenched the colonial state's role as gatekeeper of religious legal recognition. What began as a body of flexible, jurist-driven ethical reasoning was thereby progressively reconstituted as a fixed, state-administered legal category, precisely the transformation Talal Asad identifies as characteristic of colonial legal reform more broadly: codification did not simply record existing Islamic law but transmuted it, stripping away its internal tradition of interpretive debate as it was absorbed into the rigid apparatus of state law.²⁵ The codificatory process thus did

²⁴ SHAFIRA PUTERI ARTHARANI, "Peran Perempuan Dalam Islam Perspektif Epistemologi Feminisme Leila Ahmed" (PhD Thesis, UIN Raden Intan Lampung, 2025), <https://repository.radenintan.ac.id/38744/>.

²⁵ Beni Ashari, "Dimensi-Dimensi Sosiologis Fenomena Hak Dan Kewajiban Relasi Suami Istri, Dan Anak Di Indonesia," *Mabahits: Jurnal Hukum Keluarga Islam* 5, no. 01 (2024): 15–29.

not merely preserve Islamic law; it fundamentally altered its character, converting a living tradition of ethical reasoning into a static instrument of administrative governance.

This colonial legacy did not end with independence; it was carried forward, in transformed guise, into the postcolonial Indonesian state's own project of family-law unification. Law No. 1 of 1974 on Marriage and, later, the Compilation of Islamic Law of 1991 represent a continuation of the same codificatory logic: the reduction of plural, locally negotiated fiqh interpretation into a single, state-sanctioned legal text, only now pursued by an independent Muslim-majority nation-state rather than a colonial administration. The postcolonial state thus inherited not only the colonial apparatus of legal codification but also its underlying logic of subordinating religious-legal plurality to administrative uniformity and social order. This continuity suggests that the decolonization of Indonesian Islamic family law remains structurally incomplete: formal colonial rule ended, but the codificatory episteme it installed persisted largely unexamined within the very instruments the 1974 Marriage Law and the Compilation of Islamic Law that now govern how domestic violence claims are adjudicated.²⁶

This genealogy directly matters to the analysis of women's protection. The Compilation of Islamic Law's marital-breakdown-centered approach to divorce and the nusyuz-centered judicial reasoning discussed earlier are not free-floating doctrinal choices; they are sedimented outcomes of a specific historical process in which colonial administrators, and later the postcolonial state, prioritized administrable, family-stability-oriented legal categories over categories responsive to individual harm. Reading contemporary religious court practice against this genealogy reveals that when a religious court subordinates a domestic violence claim to an inquiry into whether the marriage as a whole has broken down, it is, in a meaningful sense, still applying an interpretive logic whose institutional lineage runs back through the Compilation of Islamic Law and the 1974 Marriage Law to the Staatsblad-era instruments that first subordinated Islamic legal reasoning to state administrative control.²⁷ The colonial past is not simply a historical background; it is an active presence in the interpretive habits of the present.

²⁶ Muhammad Chabibi, "Ulama Perempuan Indonesia: Resistensi Terhadap Konstruksi Sosial Patriarki," *Asketik: Jurnal Agama Dan Perubahan Sosial* 5, no. 1 (2021): 112–36.

²⁷ HANS LURA, "Urgensi Hermeneutik Poskolonial," *KINAA: Jurnal Teologi* 2, no. 2 (2017): 1–8.

Protection for women survivors of domestic violence within Islamic family law cannot be separated from the social, political, and historical context in which that law was formed. From a postcolonial perspective, Islamic family law is understood not merely as a normative religious product but as the outcome of a historical process entangled with colonialism, state modernization, and patriarchal power relations. Consequently, the weakness of protection afforded to domestic violence survivors is attributable not only to gaps in the letter of the law, but to a legal structure that, from its very inception, was not designed to fully accommodate women's experience as legal subjects.²⁸ Postcolonial theory, as advanced by Gayatri Chakravorty Spivak, introduces the concept of the subaltern: a group marginalized from, and without access to voice within, dominant structures of power. Spivak's central and much-debated conclusion, that the subaltern, structurally speaking, cannot straightforwardly "speak" within the very discourses that constitute her as subordinate, captures something precise about the position of domestic violence survivors within Islamic family law. Their experience of violence is rarely fully articulated in the law's own vocabulary; law speaks in the idiom of the state and its institutions, while women's experience is routinely reduced to the emotional, the domestic, or even to personal fault.²⁹

This dynamic plays out concretely in religious court practice. A wife's account of domestic violence is rarely disputed outright as false; rather, it is treated as legally insufficient on its own terms, subordinated to the higher threshold of proven marital breakdown, or reframed through the vocabulary of *nusyuz*, such that a wife who leaves an abusive household risks having her own conduct scrutinized as disobedience even where her underlying petition ultimately succeeds. In such patterns, the court's institutional vocabulary "marital breakdown," "nusyuz" effectively translates women's testimony of harm into categories the legal system is already prepared to hear, rather than categories capable of registering the harm on its own terms. This is precisely the structural silencing Spivak's framework anticipates: not an absence of speech, but the

²⁸ KH Husein Muhammad, *Poligami: Sebuah Kajian Kritis Kontemporer Seorang Kiai* (IRCiSoD, 2020), <https://books.google.com/books?hl=id&lr=&id=aqgJEAAQBAJ&oi=fnd&pg=PA10&dq=Kekerasan+Dala+m+Rumah+Tangga%3B+Hukum+Keluarga+Islam%3B+Poskolonial&ots=T4hFDIdPI5&sig=C7hhNagLhE6ABbSu9SHFFu1g26M>.

²⁹ Shopiyyah Nazwa and Nuriza Dora, "Transformasi Peran Perempuan Dalam Dinamika Rumah Tangga Patriarki: Perspektif Pendidikan," *Raudhah Proud To Be Professionals: Jurnal Tarbiyah Islamiyah* 9, no. 2 (2024): 369–410.

impossibility of being heard except through categories that were never built to carry the claim being made.³⁰ Catharine MacKinnon's observation that a legal system's apparent objectivity often masks the silencing of the less powerful helps explain why a religious court's ostensibly neutral, procedurally correct application of nusyuz doctrine can nonetheless produce a substantively gendered outcome: the doctrine itself already encodes a particular, historically male-centered vantage point on what counts as marital fault. This is not a claim that judges act in bad faith; it is a claim about how doctrinal categories, once historically settled, quietly determine which harms are legible to the law and which are not.

State power over the institutional determination of what counts as protectable harm is equally decisive. In postcolonial Muslim-majority states, Islamic family law has been codified and institutionalized within the framework of the modern state's legal system. This codification process, as critiqued by Asad, frequently transforms Islamic law from a flexible ethical system into a rigid legal-formal apparatus. Law thus functions more as an instrument of social control than as a mechanism of protection for vulnerable groups, including women survivors of violence. The state, through the institution of the religious judiciary, holds substantial authority in determining whether women's experience of violence is recognized as a legitimate basis for legal protection. Yet in practice, the state frequently prioritizes family stability and social order. Protection for domestic violence survivors becomes subordinate to the interest of preserving the family institution, a condition that can be termed state patriarchy: a configuration in which the state reproduces patriarchal values under the guise of legal neutrality and the public interest. The table of women's position in Islamic family law clarifies this structure: women, ideally protected legal subjects, become objects of family regulation; their experience of violence, ideally recognized as a serious violation, is frequently reduced to marital discord; the state, ideally a protector of survivors, acts as guardian of family stability; and access to justice, ideally equal and safe, is obstructed by legal structure and culture. Legal

³⁰ I. Subandrio, "Bab Iii Identitas Perempuan Dalam Sastra Poskolonial," *Sastra Dan Identitas Perempuan*, 2024,

<https://books.google.com/books?hl=id&lr=&id=ilc4EQAAQBAJ&oi=fnd&pg=PA39&dq=Kekerasan+Dala+m+Rumah+Tangga%3B+Hukum+Keluarga+Islam%3B+Poskolonial&ots=my2rZrzw9H&sig=CvOFA9MQiGSYbSy8vhAiTeqPIJs>.

protection for domestic violence survivors thus remains largely symbolic and has not yet touched the structural root of the problem.³¹

A postcolonial perspective insists that this imbalance cannot be resolved merely by adding regulation; it requires a paradigm shift in how law understands gender and power. Law must move from a legal-formal approach toward one that is more contextual and oriented toward substantive justice. The most consequential site for this internal reform is the *qiwamah* doctrine. *Qiwamah* requires reinterpretation as an ethical and social responsibility rather than as a license for domination. Frantz Fanon's critique that postcolonial structures often conceal structural violence behind a veneer of stability is instructive here: much as colonial and postcolonial states have historically justified coercive control by appeal to order and stability, a similarly literalist reading of *qiwamah* can conceal coercive control behind the language of household order and the husband's protective duty. Khaled Abou El Fadl insists that religious authority in Islam, including spousal authority, is always constrained by the overriding prohibition of *zulm*; interpretive authority that permits injustice against women forfeits its own claim to religious legitimacy. Every interpretation of Islamic family law that tolerates violence in the name of the husband's leadership therefore stands in tension with the moral coherence internal to *shari'ah* itself.

Reform of Islamic family law equally demands strengthening a *maqashid al-shari'ah*-based paradigm of protection. Protection for domestic violence survivors must be positioned as integral to the protection of life, honor, and human dignity. Ibn Ashur affirms that *maqashid* serve as an ethical compass for confronting new social problems that are unaddressed by the express indicants of scriptural texts. This approach allows Islamic family law to escape textual literalism and to respond to the reality of violence contextually and justly. Contemporary Muslim jurists likewise regard reform as a matter of historical necessity. Yusuf al-Qaradawi has argued that social change demands the renewal of independent legal reasoning, so long as such renewal does not contradict the foundational principles of *shari'ah*. In the context of domestic violence, new *ijtihad* is required to ensure that Islamic family law genuinely protects survivors, rather than

³¹ Jesica Isarani Telaumbanua, *Pengaruh Budaya Patriarki Pada Perekonomian Keluarga Baru Menurut Pandangan Feminisme Marxis Sosialis: Studi Kasus Suku Nias*, 2024, <https://repository.unpar.ac.id/items/824fd271-7a59-4def-9785-3eab705841cc>.

perpetuating violence under the guise of tradition or literal textual reading. A further implication concerns the integration of women's perspectives into the formation and interpretation of Islamic family law. Ziba Mir-Hosseini's influential argument that fiqh is a human, historically situated interpretation of divine guidance rather than an immutable expression of divine will itself, and that its classical formation excluded women from the very process of legal reasoning that produced rulings governing their lives, opens interpretive space to critique doctrines and practices that have long silenced women's experience in the name of religion and tradition. Reform must therefore open space for women's participation as legal actors, whether in academic discourse, legislation, or judicial practice itself.

Beyond doctrinal reinterpretation, decolonizing Islamic family law also requires dismantling the patriarchal assumptions inherited from the colonial system and reproduced by the modern state. Islamic family law needs to be returned to its ethical orientation as an instrument of protection rather than domination. Doctrinal reinterpretation alone cannot deliver protection without accompanying institutional reform. Judicial training and appointment practices must move beyond simply increasing the number of female judges toward substantive gender-sensitivity training that addresses how doctrinal categories such as *nusyuz* can obscure claims of violence. Mediation procedures common in religious court divorce proceedings require careful screening for domestic violence before compulsory mediation is imposed, since mediation between an abused wife and her abuser can itself compound harm and access-to-justice barriers. Statutory harmonization is needed so that the Compilation of Islamic Law explicitly incorporates the domestic violence statute's own definition of domestic violence, closing the interpretive gap rather than leaving it to case-by-case judicial discretion. Legal education likewise requires reorientation toward the formation of critical legal awareness. Judicial officers, legal scholars, and the wider public must be equipped with the understanding that domestic violence is not a private matter but a serious violation of both law and Islamic values themselves. Without this shift in consciousness, normative reform risks remaining confined to statutory text without translating into tangible protection for survivors. Taken together, the direction of Islamic family law reform in addressing domestic violence against women must be holistic and transformative. The postcolonial approach supplies a critical framework for dismantling power relations, colonial legacies, and patriarchal bias that have long obstructed women's

protection. Through the decolonization of legal thought, the reconstruction of interpretation, and the strengthening of maqashid-based protection, paired with concrete institutional reform, Islamic family law can be redirected to function as an instrument of justice that genuinely protects women from domestic violence.

Conclusion

This study demonstrates that domestic violence against women within Indonesian Islamic family law reflects a fundamental gap between Islam's normative commitment to justice, non-violence, and human dignity and a legal practice still shaped by patriarchal power relations and colonial legacy. The classical fiqh category of nusyuz and the Compilation of Islamic Law's marital-breakdown threshold together illustrate how domestic violence claims are translated into categories the legal system was not built to register as independent harm. Read through a postcolonial lens, the weakness of protection for survivors is not merely a matter of missing norms but a product of a family-law system codified within, and still structurally beholden to, the administrative logic first installed by Dutch colonial legal reform and carried forward by the postcolonial Indonesian state. The article argues for three concrete implications: legislatively, Article 116 of the Compilation of Islamic Law should explicitly incorporate the PKDRT Law's definition of domestic violence; institutionally, judicial training must move beyond numerical gender representation toward substantive gender-sensitivity and mandatory domestic-violence screening before compulsory mediation; and interpretively, *qiwamah* should be reinterpreted as ethical responsibility grounded in maqashid al-shari'ah. Only through such holistic, decolonial, and gender-just reform can Islamic family law function as an instrument of substantive justice and effective protection for women survivors of domestic violence.

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