

## **Urgency of Fatwa on Domestic Psychological Violence in Indonesia as an Effort to Protect Women's Rights**

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### **Abstract:**

One that requires a fatwa is domestic psychical violence, which has different interpretations in the two legal systems. The purpose of this study is to analyze the urgency of forming a fatwa regarding psychical violence so that it has clarity on norms that must be guided for Indonesian Muslims. This research is juridical-normative research with a conceptual and comparative approach. The results show that the urgency of forming fatwa regarding domestic psychical violence is related to 1. harmonisation between positive law and Islamic law regarding the concept of psychical violence; 2. fatwas have social power and can provide legitimacy and serve as the juridical basis for law enforcement; and 3. In terms of the fatwa of psychical violence as a source of material law, fatwa can be used as a source of material law in constructing a law. Fatwas can provide a solid basis for policymakers and legislators in drafting more formal regulations. This research can be used as discourse material regarding the importance of fatwa on psychical violence in the household. Research can be done by sharpening the differences in interpretation between Islamic law, positive law and customary law.

**Keywords:** fatwa; family law; marriage; psychical violence.

### **Introduction**

In Indonesia, there are three types of applicable laws: positive law, customary/cultural law, and Islamic law. On a practical level, these three types of laws can support, influence or deviate from each other.<sup>1</sup> For Indonesian Muslims, there is often ambiguity in the enactment of law, especially between positive law and

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<sup>1</sup> Roibin Roibin, Erik Sabti Rahmawati, dan Ifa Nurhayati, "A Model For Acculturation Dialogue Between Religion, Local Wisdom, And Power: A Strategy To Minimize Violent Behavior In The Name of Religion In Indonesia," *JOURNAL OF SOUTHWEST JIAOTONG UNIVERSITY* 56, no. 1 (Februari 2021): 1–12, <https://doi.org/DOI : 10.35741/issn.0258-2724.56.1.1>.

Islamic law.<sup>2</sup> In the context of the Indonesian state, which is a state of law, Islamic law imposed is limited and does not have the force to apply legally or formally. Such as marriage issues regulated in the Compilation of Islamic Law and economic issues regulated in the Compilation of Sharia Economic Law. This is ironic because of the sacredness of Islamic law, the association with halal and haram, and sociologically, Muslims are the majority of the Indonesian population. In addition to the form of legal compilation, Indonesian Muslims can be guided by fatwas. Fatwas, issued mainly by institutions, become a force in making social change.<sup>3</sup>

Fatwas can fill the legal vacuum or as an explanation of positive laws that are considered vague in Islamic terms,<sup>4</sup> such as criminal acts of psychological violence in the household. Many acts can be categorised as psychological violence because the basic concept of psychological violence regulated in Article 7 of the Law on Domestic Violence is a material offence that depends on consequences, giving rise to a broad and subjective interpretation. Some of the acts conceptualised in Article 7 are different from Islamic law. For example, in the concept of *birrul walidayn*, a child must obey both parents. A daughter who is forced by his father to marry as *wali mujbir* must marry the choice of his parents. However, in the concept of Article 7, this may cause disappointment, which results in psychological suffering for her. In this case, the act of *wali mujbir* can be considered as *coercive control*, which is coercion or control directed against someone.<sup>5</sup> This example emphasises the need for the establishment of fatwas regarding psychological violence in the household that have different concepts between positive law and Islamic law.

This study explores the differences in the concept of psychological violence between positive law and Islamic law, and it assesses the need for creating fatwas on this matter. While various studies have addressed psychological violence, they often focus on disparate issues. For instance, Katz's research suggests that coercive paternal control can impact the bond between mother and<sup>6</sup> Aizpurua et al. identify that restricting a partner's mobility or access to social contacts represents a moderate form of violence,

<sup>2</sup> Hanafi Hanafi, Hidayatullah Hidayatullah, dan Tamjidnor Tamjidnor, "Domestic Violence: Comparison between Islamic Law and Domestic Violence," *International Journal of Social Science, Education, Communication and Economics (SINOMICS JOURNAL)* 1, no. 1 (29 April 2022): 1–8, <https://doi.org/10.54443/sj.v1i1.1>.

<sup>3</sup> Mohammad Hasan Bisyri, "Fatwa as a Tool of Social Engineering: The Study of Fatwa of Tarjih Muhammadiyah," *JURNAL PENELITIAN*, 16 Desember 2020, 131–44, <https://doi.org/10.28918/jupe.v17i2.2986>.

<sup>4</sup> Riyanta dkk., "The Dynamic of Worship and Responses of Nahdlatul Ulama Members in Bantul, Yogyakarta, Toward the Indonesian Council of Ulama's Fatwa on the Worship During the Covid-19 Pandemic," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 1 (30 Juni 2022): 136–64, <https://doi.org/10.19105/al-lhkam.v17i1.5638>; Ahmad Suaedy dkk., "Language, Authority, and Digital Media: The Impact on the Legitimacy of Fatwas," *AHKAM: Jurnal Ilmu Syariah* 23, no. 1 (18 Juni 2023), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/28875>; Abbas Arfan dkk., "The Implementation of Maqashid Sharia: Heterogeneity of Scholars' Fatwas towards Islamic Banking Contracts," *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (14 Maret 2024): 105–28, <https://doi.org/10.22219/ljih.v32i1.32170>; A. Halil Thahir, "Towards the Multidimensional Ushul Al-Fiqh: A Study of the Integration of Science in the Fatwa of Majelis Ulama Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (7 Mei 2024): 687–705, <https://doi.org/10.22373/sjhk.v8i2.19686>.

<sup>5</sup> Emma Katz, "Coercive Control, Domestic Violence, and a Five-Factor Framework: Five Factors That Influence Closeness, Distance, and Strain in Mother–Child Relationships," *Violence Against Women* 25, no. 15 (Desember 2019): 1829–53, <https://doi.org/10.1177/1077801218824998>.

<sup>6</sup> Katz.



potentially indicative of more severe intimate partner violence (IPV).<sup>7</sup> Yurni's study in Jambi on women who return to abusive husbands highlights factors such as economic dependency and social.<sup>8</sup> Additionally, other research categorises psychical violence as a human rights<sup>9</sup> and includes behaviours like stalking<sup>10</sup> and silent treatment,<sup>11</sup> its impact on children,<sup>12</sup> and cases where children perpetrate such violence against parents.<sup>13</sup> Several studies have been conducted on psychical violence, yet none have explored the aspect of the urgency of fatwa formation on this issue. This research introduces a novel perspective and aims to contribute significantly to the development of fatwas addressing psychical violence in households. It is hoped that this study will serve as a foundational resource for further, more detailed investigations into this area.

## Method

This study employs a normative juridical research methodology, which involves the analysis of secondary data<sup>14</sup> sourced from books, journals, and articles relevant to marriage law, psychical violence offences, and fatwa formation theories. Normative juridical research primarily focuses on examining legal resources in libraries or secondary materials, making it suitable for the theoretical nature of this analysis. This research methodology is categorised into five distinct types: inventory of positive law, exploration of legal principles, identification of in-concreto law, analysis of legal systematics, and evaluation of legal consistency both vertically and horizontally. This study specifically seeks to identify in-concreto law, addressing the broad and subjective scope of psychical violence as defined in Article 7 of the Domestic Violence Law, which often overlaps vaguely with Islamic law. The methodologies applied include a conceptual approach to leverage criminal law

<sup>7</sup> Eva Aizpurua dkk., "Controlling Behaviors and Intimate Partner Violence Among Women in Spain: An Examination of Individual, Partner, and Relationship Risk Factors for Physical and Psychological Abuse," *Journal of Interpersonal Violence* 36, no. 1–2 (Januari 2021): 231–54, <https://doi.org/10.1177/0886260517723744>.

<sup>8</sup> Yurni Yurni, "Domestic Violence Cases In Jambi: Psychological Factors That Affect Victims to Return Back to Their Offenders," *Jurnal Ilmiah Universitas Batanghari Jambi* 19, no. 3 (15 Oktober 2019): 623, <https://doi.org/10.33087/jiubj.v19i3.710>.

<sup>9</sup> Nikmah Fitriah, "Kejahatan Kekerasan Psikis Dan Penelantaran Perempuan Sebagai Pelanggaran Hak Asasi Manusia" 2, no. 1 (2021).

<sup>10</sup> Daniela Acquadro Maran dan Antonella Varetto, "Psychological Impact of Stalking on Male and Female Health Care Professional Victims of Stalking and Domestic Violence," *Frontiers in Psychology* 9 (13 Maret 2018): 321, <https://doi.org/10.3389/fpsyg.2018.00321>.

<sup>11</sup> Cindy Alfionika, "SILENT TREATMENT: ANTARA HUKUMAN PSIKOLOGIS DAN KEKERASAN EMOSIONAL," *Komunikasi dan Penyiaran Islam IAIN Kediri*, 30 April 2021, <https://kpi.iainkediri.ac.id/silent-treatment-antara-hukuman-psikologis-dan-kekerasan-emosional/>.

<sup>12</sup> Caroline Dugal dkk., "Psychological Intimate Partner Violence and Childhood Cumulative Trauma: The Mediating Role of Affect Dysregulation, Maladaptive Personality Traits, and Negative Urgency," *Journal of Interpersonal Violence* 36, no. 11–12 (Juni 2021): 5101–21, <https://doi.org/10.1177/0886260518801022>.

<sup>13</sup> Fauzan Nur Adima, "Tindak Pidana Kekerasan Psikis Dalam Rumah Tangga Anak Kepada Orang Tua, dan Perbedaan Dengan Penghinaan Menurut KUHP (Studi Putusan Pengadilan Tinggi Jakarta Nomor: 168/PID/2020/PT.DKI)," *Al-Qisthu: Jurnal Kajian Ilmu-ilmu Hukum* 18, no. 1 (29 Agustus 2020), <https://doi.org/10.32694/010840>.

<sup>14</sup> Henni Muchtar, "Analisis Yuridis Normatif Sinkronisasi Peraturan Daerah Dengan Hak Asasi Manusia," *Humanus: Jurnal Ilmiah Ilmu-Ilmu Humaniora* XIV, no. 1 (Agustus 2016), <https://doi.org/DOI> : <https://doi.org/10.24036/jh.v14i1.5405>.



theories and a comparative approach to examine the definitions and interpretations of psychological violence under both positive and Islamic law

## Result and Discussion

### The Concept of Psychological Violence in Criminal Law

The crime of psychological violence is addressed in Article 7 of the Law on Domestic Violence, which defines it as any act within the household<sup>15</sup> that causes psychological suffering. In criminal law, offences predicated on these consequences are referred to as material crimes, meaning that the crime is complete once the specified effects have manifested. This definition of psychological violence introduces several complexities in its application, as the term is both broad and subjective.<sup>16</sup> To clarify, the author has developed a typology of psychological violence based on court decisions from 2020 to 2021. This typology categorises psychological violence into various forms, including verbal humiliation, threats, infidelity, neglect, denial, silent treatment, and continuous physical abuse leading to psychological distress. These categories are outlined in the following table:

**Table 1.** Typology of Psychological Violence According to Court Decisions in 2020-2021

No	Violence Type	Decision	Quantity
1	Verbal Insults/Abuse	1. No. 161/Pid.Sus/2020/PN.Kwg 2. No. 182/Pid.Sus/2021/PN Clp 3. No. 54-K/PM II-09/AD III/2021	3 Verdicts
2	Threats	1. No. 200/Pid.Sus/2021/PN Clp 2. No. 162/Pid.Sus/2020/PN Lwk 3. No. 33/Pid.Sus/2020/PN.Mgn 4. No. 506/Pid.Sus/2020/PN Mre 5. No. 88/Pid.B/2021/PN Mre 6. No. 184 Pid.Sus/2014/PN Ktp 7. No. 149/Pid.Sus/2021/PN Lsm	8 Verdicts
3	Infidelity	1. No. 2192/Pid.Sus/2020/PN.Mdn 2. No. 506/Pid.Sus/2021/PN Mre 3. No. 578/Pid.Sus/2021/PN Dps	3 Verdicts
4	Neglect	1. No. 506/Pid.Sus/2021/PN Mre 2. No. 179/Pid.Sus/2021/PN Tbt 3. No. 54-K/PM II-09/AD/III/2021 4. No. 298/Pid.Sus/2020/PN Mdn 5. No. 2192/Pid.Sus/2020/PN.Mdn	5 Verdicts
5	Denial	1. No. 96 /Pid.Sus/2019/PN Jkt.Se 2. No. 298/Pid.Sus/2020/PN Mdn	2 Verdicts

<sup>15</sup> Resa Rionika and Rusdian Noor Dermawan, "Psychic Violence, Causes, and Effects on Children in Sundari Mardjuki's Genduk Novel: A Review of Literary Psychology," *Caraka* 6, no. 1 (December 15, 2019): 142, <https://doi.org/10.30738/.v6i1.6599>.

<sup>16</sup> Dika Pratama, "The Effectiveness of Law on the Elimination of Domestic Violence No. 23 of 2004 in Yogyakarta," *Journal of Lex Renaissance* 4, no. 2 (July 1, 2019), <https://doi.org/10.20885/JLR.vol4.iss2.art10>.





6	Silent treatment	1. No. XX/Pid.Sus/2021/PN Nab	2
		2. No. 298/Pid.Sus/2020/PN Mdn	Verdicts
7	Physical Violence That Causes Fear, Anxiety	No. 3/Pid.Sus/2020/PN.Bjr	1
			Verdicts

Source: Supreme Court of the Republic of Indonesia 2023

Nevertheless, this typology still does not cover all forms of psychical violence that a person can commit. An example is coercive control or forced control, as research conducted by Katz.<sup>17</sup> Coercive control includes forbidding a person to do anything, conducting continuous surveillance and other forms of control.<sup>18</sup>

*Second*, to prove the existence of the psychical condition of the victim, a *Visum et Repertum Psychiatricum* must be carried out.<sup>19</sup> *Visum et Repertum Psychiatricum* (ereinafter abbreviated as *VeRP*) is a psychiatric doctor's statement in the form of a letter as a result of a mental health examination of a person for the benefit of legal proceedings. This *visum* is performed by an expert at the request of a judge.<sup>20</sup> *VeRP* is essential to do because psychical violence usually takes place in closed spaces (hidden crime).<sup>21</sup> In addition, the psychical suffering of the victim is usually suppressed by the victim and not revealed to anyone (suffering in silence). This is due to the existence of subordinative relationships or imbalances in power relations between perpetrators and victims. But in reality, *VeRP*, which is vital evidence in the criminal act of psychical violence, is often not performed.<sup>22</sup>

*Third*, *VeRP* is not applied to perpetrators. To prove the psychical condition of the perpetrator at the time of committing a criminal act of psychical violence, this such *visum* is also needed in terms of exempting the perpetrator from sanctions if there is no “guilty mind”, giving severe sanctions if the act is really done in a conscious state to cause psychical suffering to someone within the scope of the household, and finally, imposing a rehabilitation sentence if the judge considers that the perpetrator can still be fostered for improvement in married life. *Fourth*, it does not consider the teaching of causality. Causality in criminal law is defined as teaching to look for “*a causal verband*” between actions and consequences.<sup>23</sup> *Causal verband*, in

<sup>17</sup> Katz, “Coercive Control, Domestic Violence, and a Five-Factor Framework.”

<sup>18</sup> Emma Katz, Anna Nikupeteri, dan Merja Laitinen, “When Coercive Control Continues to Harm Children: Post-Separation Fathering, Stalking and Domestic Violence,” *Child Abuse Review* 29, no. 4 (Juli 2020): 310–24, <https://doi.org/10.1002/car.2611>.

<sup>19</sup> Muhammad Jazil Rifqi, “Multitafsir Penyebab Kekerasan Psikis dalam Rumah Tangga : Perlukah Visum et Repertum Psikiatrikum dalam Pembuktian?,” *Legalite: Jurnal Perundang-undangan dan Hukum Pidana Islam* 7, no. 1 (5 Juli 2022): 59–75.

<sup>20</sup> Pasal 1 (2) Peraturan Menteri Kesehatan Republik Indonesia Tentang Pedoman Pemeriksaan Kesehatan Jiwa Untuk Kepentingan Penegakan Hukum, Permenkes Nomor 1861 Tahun 2015

<sup>21</sup> Y A Triana Ohoiwutun dkk., “PERAN AHLI JIWA DALAM PEMBUKTIAN TINDAK PIDANA KEKERASAN PSIKIS DALAM RUMAH TANGGA,” *Veritas et Justitia* 8, no. 1 (27 Juni 2022): 219–42, <https://doi.org/10.25123/vej.v8i1.4443>.

<sup>22</sup> Husni Thamrin, Eli Tri Kursiswanti, dan Ira Pebriani, “Tinjauan Yuridis Terhadap Pembuktian Tindak Pidana Kekerasan Psikis Dalam Lingkup Rumah Tangga,” *Collegium Studiosum Journal* 4, no. 1 (30 Juni 2021): 45–54, <https://doi.org/10.56301/csj.v4i1.227>.

<sup>23</sup> Muh Nizar, Amiruddin, dan Lalu Sabardi, “Ajaran Kausalitas Dalam Penegakan Hukum Pidana (Studi Putusan Mahkamah Agung Nomor 498 KPID 2016)” Vol.7.No.1.2019 (6 Januari 2019): 185, <https://doi.org/10.37081/ed.v7i1>.



this teaching of causality, can be an accumulation of several causes. This makes it difficult to detect pure psychical suffering from one person or one cause only, like in the case of a mother in Brebes who killed her son, who was later found to have been psychically abused before marriage.<sup>24</sup>

*Fifth*, The criminal act of psychical violence, as outlined in Article 7 of the Law on Domestic Violence, does not take into account the severity of the act. This legislation treats all actions deemed as psychical violence equally, assigning them the same weight and consequences. In criminal law, this approach relates to the concept of a qualified offence, where both the nature of the act and its implications are considered uniformly. *Sixth*, The penalties for psychical violence outlined in Article 45 of the Domestic Violence Law are insufficiently deterrent. Ideally, criminal law sanctions<sup>25</sup> should deter offenders and foster their improvement. In the contemporary approach to punishment, the objective extends beyond mere deterrence; it aims to enhance the conditions of all parties involved in criminal acts, including the offenders, victims, and the broader community. Specifically, in cases of psychical violence, imposing sanctions on the perpetrator may further strain familial relationships and, in the case of married couples, could lead to divorce.

### **The Urgency of Fatwa Formation of Psychical Violence in the Household The Difference Concept and Meaning of Psychical Violence**

In Islam, marriage transcends mere legal formality; it is revered as a form of worship imbued with profound religious significance within the framework of *taabbudi*. Islamic marriage law, enriched by ethical principles, justice, and the protection of individual rights, underscores the spiritual dimension of marriage<sup>26</sup> viewing it as a fulfilment of religious duty. This perspective starkly contrasts with secular marriage laws, which are grounded in civil, customary, cultural, and social norms applicable to all citizens, regardless of their religious beliefs. These laws view marriage primarily as a social institution regulated to maintain societal and national order. This paradigmatic divergence places the Indonesian Muslim community at a juncture where religious doctrines and civic obligations intersect, particularly in matters such as marriage registration, polygamy, nafaqah, and talaq. These issues are governed by dual norms: for instance, an unregistered marriage may be recognised under Islamic law but requires official registration under civil law. Similarly, while Islamic law does not mandate the first wife's consent for polygamy, civil law insists on it as a fundamental condition.<sup>27</sup> The discrepancy extends to the understanding of psychical violence, where the interpretation varies significantly between Islamic and civil law. A notable example of this divergence is the accusation of adultery, which, under Islamic law, could lead to divorce if the husband invokes the li'an oath, a severity not mirrored in civil law. To navigate these complex intersections, this

<sup>24</sup> Diva Lufiana Putri dan Rizal Setyo Nugroho, "Fakta Ibu Bunuh Anak Kandung di Brebes, Kronologi Kasus, Korban hingga Pelaku Diduga Depresi," *Suara.com*, 22 Maret 2022, <https://www.suara.com/news/2022/03/22/120125/fakta-ibu-bunuh-3-anak-kronologi-kasus-pembunuhan-di-brebes-hingga-pelaku-diduga-depresi?page=2>.

<sup>25</sup> Darania Anisa and Kholifatun Nur Mustofa, "Problems of Domestic Violence (KDRT)" 05, no. 2 (2021), <https://doi.org/10.24952/gender.v5i2.4553>.

<sup>26</sup> Ibnu Radwan Siddik Turnip, "Perkawinan Beda Agama: Perspektif Ulama Tafsir, Fatwa Mui dan Hukum Keluarga Islam di Indonesia," *Al-Tadabbur: Jurnal Ilmu Al-Qur'an Dan Tafsir* 6, no. 1 (2021), <https://doi.org/10.30868/at.v6i01.1337>.

<sup>27</sup> Pasal 3 ayat (2) Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan



discussion relies on judicial decisions concerning infidelity, as detailed in cases like Decision No. 2192/Pid.Sus/2020/PN.Mdn, Decision No. 506/Pid.Sus/2021/PN Mre, and Decision No. 578/Pid.Sus/2021/PN Dps. These cases illustrate how infidelity, viewed through the lens of psychical violence, encapsulates not just a breach of trust but a confluence of marital dissatisfaction, personal motives, and individual character traits<sup>28</sup> all shaped by broader societal, cultural, and religious contexts.<sup>29</sup>

Infidelity is categorised into three forms: emotional, sexual, and a combination of both.<sup>30</sup> In an Islamic context, while a husband's emotional infidelity—such as engaging romantically with someone other than his wife—is forbidden and seen as nearing adultery, it carries no legal consequences. However, remarriage (*nikah sirri*/polygamy) as a form of infidelity is not considered unlawful in Islam since polygamy is permissible. On the other hand, sexual infidelity is unequivocally prohibited (*haram*). In civil law, infidelity is specifically outlawed when it involves sexual intercourse, as defined under Article 284 of the Criminal Code, which primarily addresses *zina* (sexual infidelity) where one or both involved parties are married. This legal stance stems from the view that extramarital sexual relations betray the sanctity of marriage.<sup>31</sup> *Second*, threats involve the perpetrator using specific tones or words to coerce the victim into performing actions as dictated by the perpetrator. Legally, such behaviour is addressed under criminal law; specifically, it falls within the purview of Article 335, Paragraph 1 of the Criminal Code, which states: “Whoever unlawfully forces another person to do, not do, or allow something, by using force, something else, or by using threats of violence, something else, either against himself or others.” In this study, threats were directed at individuals within the household. For instance, in the case of Decision No. 162/Pid.Sus/2020/PN Lwk, the chronology describes a husband coercing his wife with a machete to reveal the location of his securities.

In addition to using tools or weapons, threats can also be made verbally, once or repeatedly, as a form of intimidation or pressure on the victim so that the victim follows the will of the perpetrator. In Islamic law, threats can be categorised as coercion or “*ikrah*”. Basically, *ikrah* means “bringing another person to what he does not like.” Linguistically, *Ikrah*, according to Imam Jurjany, is defined as follows: “There is coercion from others against something that is not liked, accompanied by threats.” Whereas according to As-Shaykh As-Said Sabiq, *Ikrâh* is: “to force a person to carry out an order that he does not want in common sense or *shara*,” while “there is coercion from someone without rights to things that are not liked.”<sup>32</sup>

<sup>28</sup> Rischia Deviana, “Pemaafan pada Perempuan Korban Perselingkuhan dalam Hubungan Perkawinan,” *Jurnal Ilmiah Psikologi Candradiwa* 6, no. 2 (3 Januari 2022): 104, <https://doi.org/10.20961/jip.v6i2.55791>.

<sup>29</sup> Menina Vilanova Syamsuri dan Suksmi Yitnamurti, “Perselingkuhan dalam Sudut Pandang Psikiatri,” *Jurnal Psikiatri Surabaya* 6, no. 1 (12 Mei 2020): 48, <https://doi.org/10.20473/jps.v6i1.19101>.

<sup>30</sup> Syamsuri dan Yitnamurti.

<sup>31</sup> Dea Justicia Ardha, dkk, “Pemidanaan Terhadap Pelaku Zina,” *Suluh Abdi: Jurnal Ilmiah Pengabdian Kepada Masyarakat* Volume 4, no. 2 (Desember 2022): 78–85. <https://doi.org/10.32502/sa.v4i2.5173>

<sup>32</sup> Mahmudin, “Ikrah (Paksaan) Dalam Perspektif Hukum Islam,” *Al-Falah: Jurnal Ilmiah Keislaman dan Kemasyarakatan* Vol. 20, no. 2 (2020), <https://ejournal.staialfalahbjb.ac.id/index.php/alfalahjikk/article/download/144/153>.



From this understanding, *ikrah* is actually an act that is prohibited by religion because it can be considered an act of tyranny. However, not all *ikrah* is forbidden. Examples of *ikrah* in Islamic marriage law are a husband who forces his wife to stop working or a wali mujbir who forces his daughter to marry. Both of these are actually permissible in Islam, but unlike positive law, such coercion can be categorised as a form of psychological violence because it can cause disappointment, sadness, anger, or other psychological suffering, as referred to in Article 7 of the Domestic Violence Law. Even forcing children to marry when the child is still “underage” may represent sexual violence, as referred to in Article 10, paragraph (2) of the Law of the Republic of Indonesia Number 12 of 2022 on Criminal Acts of Sexual Violence.<sup>33</sup>

*Third*, Denial, as illustrated in Decision No. 965/Pid.Sus/2021/PN Jkt.Se and Decision No. 298/Pid.Sus/2020/PN Mdn, involves rejecting the paternity of a child in the wife’s womb and verbally disparaging the wife’s parents. In Islam, such denial equates to indirectly accusing the wife of adultery, referencing Surah an-Nur, verse 6, which reads:

*“And those who accuse his wife (of adultery), when they have no witnesses but themselves, then the testimony of each of them is four times sworn by (the name of) Allah, that verily he is among those who speak the truth.”*

If the husband then takes the oath of *li'an* because of this, then triple talaq falls on his wife. This oath must be pronounced before the court.<sup>34</sup> The different concepts are seen in terms of whether or not her husband's accusations are proven. In positive law, the accusation does not automatically impose talaq on his wife. If not proven, such denial is only a form of psychological violence against the wife because it causes her to become depressed, hurt, and disappointed. Fourth, the silent treatment involves deliberately withholding verbal communication<sup>35</sup> often to make the recipient feel culpable or remorseful for their actions. Employed as a passive-aggressive tactic, the silent treatment serves as a means of punishment or manipulation within interpersonal relationships, where the silent party aims to impose awareness of wrongdoing through non-engagement.<sup>36</sup>

There are three primary reasons someone may choose to remain silent: Firstly, avoidance—when an individual remains silent either because they're unsure of what to say or wish to evade conflict; secondly, communication—this occurs when a person does not know how to articulate their emotions but wants to signal their anger or disappointment, and, lastly, as punishment—where silence is used strategically to penalise others or exert control, often qualifying as a form of emotional abuse

<sup>33</sup> Juvani Leonardo Fiore Mongkaren dan dkk, “Tindak Pidana Pemaksaan Perkawinan Menurut Undang-Undang Nomor 12 Tahun 2022,” *Lex Crimen* Vol. 12, no. 3 (Mei 2023), <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/47970>.

<sup>34</sup> Bahri Andi Syamsul, “Legal Status of The Li’an Children Recognition: Comparison of The Mazhab Malikiyah and The Compilation of Islamic Law,” *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam* Vol. 7, no. 1 (Juni 2022), <https://doi.org/10.25217/jmv7i1.2381>.

<sup>35</sup> Cindy Alfionika, “Silent Treatment: Antara Hukuman Psikologis Dan Kekerasan Emosional,” *Komunikasi dan Penyiaran Islam IAIN Kediri*, 30 April 2021, <https://kpi.iainkediri.ac.id/silent-treatment-antara-hukuman-psikologis-dan-kekerasan-emosional/>.

<sup>36</sup> Jingxi Zhai, “Breaking the Silent Treatment: The Contractual Enforceability of Non-Disclosure Agreements for Workplace Sexual Harassment Settlements,” *Columbia Business Law Review* 2020, no. 1 (14 Oktober 2020), <https://doi.org/10.52214/cblr.v2020i1.7162>.





(psychical violence).<sup>37</sup> In Islamic law, silence is permissible in the matter of *nushuz*. Allah (swt) says in verse 34 of QS an-Nisa: "Those women whom you are worried about *nushuz*, you should advise them, leave them in bed, and (if necessary) beat them, but if they obey you, then do not find excuses to trouble them". The phrase "leave them in bed" can mean Either separate *lughowi*, not associating with her (separating the bed), or ostracising her with words<sup>38</sup> (not communicating) in the sense of having a silent attitude or silent treatment. *Fifth*, neglect, specifically the failure to provide for one's wife, has led to numerous court cases. Such neglect is seen as psychologically damaging, undermining the wife's mental well-being and leading her to feel unloved and unvalued. This type of emotional neglect can have profound impacts, as evidenced by several court decisions, including Decisions No. 506/Pid.Sus/2021/PN Mre and No. 179/Pid.Sus/2021/PN Tbt which address cases where husbands failed to fulfil their marital duties to provide, reflecting a disregard that is both hurtful and legally actionable

In Islam, subsistence is basically obligatory to the husband based on Sura an-Nisa' verse 34, which reads *الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا*. Multiple mufassirs said that it is not forbidden and does not rule out the possibility that the breadwinner is the wife based on the phrase: *بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا*. The dominance of patriarchal culture causes income to be regulated as an obligation of the husband to the wife as Article 34 of the Marriage Law. Similarly, it is stated in Article 80 of the Compilation of Islamic Law. The two articles are basically the same, namely that the husband is obliged to protect his wife and provide everything necessary for married life according to his ability. If the husband does not fulfil his obligation, he can be said to have committed *nushuz*. *Sixth*, physical violence, as defined by Article 5 of the Domestic Violence Law, includes any act that inflicts pain, illness, or severe injury on a person. Forms of physical violence encompass actions like hitting, pinching, kicking, and torturing with dangerous implements. The resultant injuries can range from minor to severe, potentially leading to death.

The interpretation of physical violence in domestic settings is often coloured by cultural norms and religious beliefs, notably in the understanding of verse 34 of Surah an-Nisa, which discusses the conditions under which a husband may strike a wife committing *nusyuz*. According to Abdul Munib, in Indonesia—where the majority are Muslims and Islamic law influences family law—there exists a strong patriarchal culture. This context often exacerbates the negative consequences of *nusyuz*, potentially triggering violence against women.<sup>39</sup> Similarly, research by Analiansyah

<sup>37</sup> Jayne Leonard reviewed by Alex Klein, PsyD, "Is the silent treatment a form of abuse?", *Medical News Today*, 8 Juni 2020, [Silent treatment: Is it abuse and how to respond \(medicalnewstoday.com\)](https://www.medicalnewstoday.com)

<sup>38</sup> Muhammad Tsabbit Abdullah, "Konsep Nusyuz Dan Kekerasan Yang Dilakukan Suami Atau Istri Dalam Sebuah Rumah Tangga," *Pengadilan Agama Rangkasbitung* (blog), 10 Januari 2024, <https://pa-rangkasbitung.go.id/pa-website/publikasi-artikel/arsip-artikel/416-konsep-nusyuz-dan-kekerasan-yang-dilakukan-suami-atau-istri-dalam-sebuah-rumah-tangga#:~:text=A1%2Dqur'an%20menjelaskan%20dalam,bukan%20untuk%20melukai%20anggota%20tubuh>.

<sup>39</sup> Abdul Munib, "Limitations of Husbands' Rights in Treating Wives During Nusyuz and Possible Criminal Sanctions," *Voice Justicia: Journal of Law and Justice* Volume 3, no. 2 (September 2020), <https://doi.org/10.24952/almaqid.v6i2.3432>.



and Nurzakia suggests that misunderstandings about nusyuz can lead to arbitrary or violent behaviours victimising wives in domestic settings.<sup>40</sup>

Returning to the context of physical violence within the typology presented above, such violence is consistently perpetrated by the offender. In these instances, any act of physical violence can leave the victim feeling hurt and devalued. Experts in marriage law suggest that physical violence by husbands often stems from the wives' *nusyuz*.<sup>41</sup> However, the reverse can also be true. According to Mubadalah's theory, *nusyuz* can occur by both the husband and wife.<sup>42</sup> Moving on to the seventh category, humiliation (verbal violence): psychical violence encompasses both verbal and non-verbal forms. Verbal violence involves demeaning, disrespectful, intimidating, racist, sexist, homophobic, ageist, or blasphemous remarks.<sup>43</sup> Non-verbal violence includes coercive control and silent treatment. In this context, the Holy Prophet Muhammad said, "*Whoever believes in Allah and the Last Day, let him speak well or be silent*" (reported by Bukhari). Imam Nawawi explains that this authentic hadith encourages speaking beneficially, and when in doubt about the value of one's words, silence is the best course of action.<sup>44</sup>

Additionally, there is a hadith where a companion asked the Prophet, "O Messenger of Allah, what rights does a wife have over her husband?" The Prophet responded, "Feed her when you eat, clothe her when you dress, do not strike her face, do not revile her, and do not desert her except within the home." (Reported by Abu Dawud and Ahmad bin Hanbal). According to Imam al-Albani, this hadith is considered *hasan sahih* and thus serves as a reliable foundation for understanding marital duties. From the hadith above, it can be understood that it is the right of the wife not to be treated poorly but to be treated well. The word *تَفْوِجٌ لَا* means a prohibition on doing evil deeds to a wife. The word "*al-qubh*" as a form of *isim masdar* contains the meaning of "bad" or contrary to good or beautiful (*hasan*).<sup>45</sup> The term "*al-qubh*" can refer to the poor treatment of wives, both in physical judgment and acts. The word is sometimes also interpreted as insulting or humiliating. The word "*al-*

<sup>40</sup> Analiansyah dan Nurzakia, "Konstruksi Makna Nusyuz Dalam Masyarakat Aceh Dan Dampaknya Terhadap Perilaku Kekerasan Dalam Rumah Tangga (Studi Kasus di Kecamatan Ingin Jaya)," *Gender Equality: International Journal of Child and Gender Studies* 5, no. 2 (2019). <http://dx.doi.org/10.22373/equality.v5i2.5602>

<sup>41</sup> Fitri Rafianti dan M. Hary Angga Pratama Sinaga, "Nusyuz as the Cause of Domestic Violence: A Comparative Study of Islamic Law and Criminal Law," *INJURLENS* 3, no. (1) (14 April 2023): 11-20.

<sup>42</sup> Rizqa Febry Ayu dan Rizki Pangestu, "Modernitas Nusyuz: Antara Hak Dan Kdrt," *YUDISIA : JURNAL PEMIKIRAN HUKUM DAN HUKUM ISLAM* Vol. 12, no. 1 (Juni 2021), <https://journal.iainkudus.ac.id/index.php/Yudisia/index>.

<sup>43</sup> Edo Dwi Cahyo, Fertilia Ikashaum, dan Yuliantita Putri Pratama, "Kekerasan Verbal (Verbal Abuse) Dan Pendidikan Karakter" 3, no. 2 (2020). <http://dx.doi.org/10.31949/jee.v3i2.2418>

<sup>44</sup> "Mimbar Dakwah Sesi 101 : Menjaga Lisan, Berarti Menjaga Keselamatan Dunia dan Akhirat," 16 November 2020, <https://jabar.kemenag.go.id/portal/read/mimbar-dakwah-sesi-101-menjaga-lisan-berarti-menjaga-keselamatan-dunia-dan-akhir>.

<sup>45</sup> Hairul Hudaya, "Kekerasan Psikis Dalam Rumah Tangga (Perspektif Undang-Undang PKDRT dan Hadis)," *Musāwa Jurnal Studi Gender dan Islam* 16, no. 1 (23 April 2018): 53, <https://doi.org/10.14421/musawa.2017.161.53-65>.



*qubh*" is aligned with the word "*shatama*," which is also used in the interpretation to refer to hatred and anger.<sup>46</sup>

Thus, the hadith describes a specific prohibition for husbands to berate or insult their wives, including in terms of physical appearance and behaviour. This prohibition indicates objection to the actions of husbands who express anger and hatred towards their wives through derogatory words or behaviour. Allah Almighty aid in QS. an-Nisa verse: "*And associate with them properly. Then, if you don't like them, be patient because maybe you don't like something, even though God made her a lot of good.*" Behaviours in marriage, in addition to obtaining rules from the Qur'an and al-Hadith, are also obtained from the behaviour of the Prophet (peace be upon him), including how the Prophet treated his wives, how gentle he was, and his romance in marriage. Even when Aisha spoke loudly in front of him, he forbade Abubakar, her father, to beat Aisha.<sup>47</sup> The Holy Prophet said: "If Allah desires goodness in the household, then Allah will include tenderness in all their affairs." (HR. Ahmad (40/488), number 24427, and Al-Baihaqi in Shu'abul Iman (6/337), number 8418).

### **The Urgency of Fatwas as a Contextualization of the Meaning of Criminal Acts of Psychical Violence**

Regarding the urgency of forming fatwas on psychical violence in the household related to the running of a legal system, Lawrence M. Friedman explained that the legal system is a dynamic system that moves endlessly.<sup>48</sup> When there is input, the system will run and produce output and feedback.<sup>49</sup> Fatwas, in the legal system in Indonesia, can be said to be output, while input is issues or problems that arise from society. The process in the legal system that produces fatwas is an *ijtihad* carried out by institutions that have authority. According to Yusuf Qardhawi, *ijtihad* is something that gets legitimacy in Islam; therefore, the opportunity for ulama (MUI) to do *ijtihad* is now a must, and the law is *fardlu kifayah*, in order to determine a law in a global and dynamic context.<sup>50</sup> Muhammad Sirojudin Sidiq said that fatwas have a central role in Islamic society, with the ulama as mufti having high authority in issuing fatwas and guiding the ummah.<sup>51</sup> Similarly, in some Islamic countries, fatwas have a vital role as guidelines to deal with the various problems of Muslims<sup>52</sup> and

<sup>46</sup> Hairul Hudaya, "KEKERASAN PSIKIS DALAM RUMAH TANGGA (Perspektif Undang-Undang PKDRT dan Hadis)," *Musāwa Jurnal Studi Gender dan Islam* 16, no. 1 (23 April 2018): 53, <https://doi.org/10.14421/musawa.2017.161.53-65>.

<sup>47</sup> Hadits larangan kekerasan dalam rumah tangga ini diriwayatkan Imam Abu Dawud dalam Sunannya (no. hadits: 5001) dan Imam Ahmad dalam Musnad-nya (no. hadits: 18685 dan 18712).

<sup>48</sup> Mustafa 'Afifi Ab. Halim dan Shabrina Zata Amni, "Legal System in the Perspectives of H.L.A Hart and Lawrence M. Friedman," *Peradaban Journal of Law and Society* 2, no. 1 (16 Juni 2023): 51–61, <https://doi.org/10.59001/pjls.v2i1.83>.

<sup>49</sup> Ana Aniza Karunia, "PENEGAKAN HUKUM TINDAK PIDANA KORUPSI DI INDONESIA DALAM PERSPEKTIF TEORI LAWRENCE M. FRIEDMAN" *Jurnal Hukum dan Pembangunan* 10, no. 1 (2022). <https://doi.org/10.20961/hpe.v10i1.62831>

<sup>50</sup> Syukur dan Husni, "Studi Analisis Model Dan Pendekatan Fatwa Hukum Keluarga Kontemporer Di Kalangan Ulama' Moderat."

<sup>51</sup> Muhammad Sirojudin Sidiq, "Kedudukan Fatwa Dalam Studi Hukum Islam Dan Masyarakat Islam," *al-Gharra: Jurnal Hukum Keluarga Islam* 1, no. 2 (2022): 76–86.

<sup>52</sup> M. Zainul Hasani Syarif, "The Position of Fatwas in Muslim Countries: Indonesia, Berunai Darussalam, Malaysia, Egypt," *Hikmah: Journal of Islamic Studies* 16, no. 2 (2020): 185–202, <https://doi.org/10.47466/hikmah.v16i2.174>.



even being able to become a tool of social engineering.<sup>53</sup> According to Danu Aris Setiyanto, MUI's fatwa has been able to be an answer and even a counterweight to state and religious legal controversies in society. The power of such fatwas directs and points to divine values and ways of thinking, acting as an Indonesian Muslim community.<sup>54</sup>

Back to Friedman's theory of the legal system. Input from a legal system can come from individuals, groups, or states that need or request fatwas. The resulting fatwa can be enforced or not by the fatwa requester. This is because fatwas do not have binding force as a formal legal basis, as stipulated in Law of the Republic of Indonesia Number 12 of 2011 on the Establishment of Laws and Regulations. Although fatwas do not have the force of a formally binding law, for Muslim communities, especially in the context of a country like Indonesia that is not based on Islamic law, fatwas still play an essential role in the process of making government policies, political policies, and legislation.<sup>55</sup> Fatwas are often moral and ethical guidelines that are respected by many in society. Fatwas can provide direction and influence actions and policies taken by the government. Therefore, the role of fatwas in this context is more focused on moral aspects and social influence than formal legal force.<sup>56</sup>

According to Hamdan Zoelva, a fatwa is a statement of Islamic law issued by scholars, either individually or in groups, regarding a matter.<sup>57</sup> MUI's fatwa is considered to be the result of *ijma'*, which is the agreement of scholars in the organisation. Although similar to *ijma'*, fatwas have differences in that they involve thought and *ijtihad*. The function of fatwas is not only to provide solutions but also to respond to the development of contemporary problems in accordance with the demands of the times.<sup>58</sup> One of the organisations that has the authority to make fatwas is the Indonesian Ulama Council (MUI). MUI is an independent religious organisation in Indonesia. The MUI has no affiliation with any particular political party, *madzhab*, or Islamic religious sect. This organisation is considered autonomous and emphasises the spirit of independence, not being dependent on external parties in conveying views, thoughts, attitudes, and decision-making. The primary function of MUI is to bridge the relationship between the government and the community by referring to the concept of *amar ma'ruf nahi munkar*.<sup>59</sup> According to Eva Yuliana et

<sup>53</sup> Danu Aris Setiyanto, "Fatwa Sebagai Media Social Engineering (Analisis Fatwa MUI di bidang Hukum Keluarga Pasca Reformasi)" 3 (2018). <https://doi.org/10.22515/alakhkam.v3i1.1342>

<sup>54</sup> Setiyanto.

<sup>55</sup> Ismail Ismail, "Urgensi dan Legitimasi al Majelis Permusyawaratan Ulama Aceh Nomor 3 Tahun 2018 tentang Penetapan Arah Kiblat," *Al-Manahij: Jurnal Kajian Hukum Islam* 14, no. 1 (2 Juni 2020): 87–98, <https://doi.org/10.24090/mnh.v14i1.3669>.

<sup>56</sup> Abidah Masrurah dan IAIN Palangkaraya, "Urgensi Fatwa MUI dalam Pembangunan Sistem Hukum Ekonomi Islam di Indonesia" 2 (2022).

<sup>57</sup> Al Fitri Johar, "KEKUATAN HUKUM FATWA MAJELIS ULAMA INDONESIA (MUI) DARI PERSPEKTIF PERATURAN PERUNDANG-UNDANGAN DI INDONESIA," *Mahkamah Agung Republik Indonesia* (blog), 1 Februari 2019, <http://pa-negarakalsel.go.id/en/artikel/354-kekuatan-hukum-fatwa-mui-dari-perspektif-peraturan-perundang-undangan-di-indonesia>.

<sup>58</sup> Johar.

<sup>59</sup> Eva Yuliana, Tubagus Muhammad Nasarudin, dan Andre Febian Perdana, "Analisis Yuridis Kedudukan Fatwa Mui Dalam Sistem Ketatanegaraan Di Indonesia (Studi Kasus Fatwa Mui Nomor 33 Tahun 2018 Tentang Penggunaan Vaksin Measles Rubella Di Kota Bandar Lampung)," *Jurnal Hukum Malahayati* 3, no. 2 (15 Agustus 2022): 95–104, <https://doi.org/10.33024/jhm.v3i2.7016>.





al., MUI fatwas are equated with the position of expert opinions on law, language, and religion so that in the lives of Muslims, they are not legally binding but only religiously binding.<sup>60</sup>

In Islamic law, fatwas have high authority as explanators and determinants of Islamic law. Fatwas serve as guidelines that provide answers to various problems taken from *nash* (Islamic legal texts).<sup>61</sup> Muslims are expected to abide by the provisions of the fatwa, which ostensibly constitute the execution and observance of the *nash*. Therefore, fatwas have become a central guide in the actions and policies of Muslims, affirming the importance of adherence to Islamic law in a variety of contexts,<sup>62</sup> starting with social, religious, economic, and political problems. Even in the political sphere, Mohamad Baihaqi found that differences in voting choices between MUI scholars have an impact on polarisation in society, which has the potential to trigger conflicts at the grassroots level.<sup>63</sup> Back to the urgency of fatwas on the criminal act of psychical violence, psychical violence causes a domino effect or continued impact.<sup>64</sup> This impact will most likely be passed on by the victim to those around him who are under his subordination, as evident in the tragedy where a mother in Brebes murdered her child, and the mother was later discovered that she was severely depressed due to psychical abuse even before she got married.<sup>65</sup>

<sup>60</sup> Eva Yuliana, Tubagus Muhammad Nasarudin, Dan Andre Febian Perdana, "Analisis Yuridis Kedudukan Fatwa MUI Dalam Sistem Ketatanegaraan Di Indonesia (Studi Kasus Fatwa MUI Nomor 33 Tahun 2018 Tentang Penggunaan Vaksin Measles Rubella Di Kota Bandar Lampung)," *Jurnal Hukum Malahayati* 3, no. 2 (15 Agustus 2022): 95–104, <https://doi.org/10.33024/jhm.v3i2.7016>.

<sup>61</sup> Zainul Mun'im, "The Epistemology of MUI's Fatwas on Covid-19: Bayani and Burhani Eclecticism," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (30 Mei 2022): 1, <https://doi.org/10.29240/jhi.v7i1.3216>; Abdul Syatar dkk., "The Development of Fatwas Based on Local Wisdom to the National Level: A Case Study of Panaik Money Fatwa," *El-Mashlahah* 13, no. 2 (31 Desember 2023): 133–50, <https://doi.org/10.23971/el-mashlahah.v13i2.7373>; Muhammad Rasyid dkk., "Science And Its Role In Changes In Islamic Legal Thought (An Analysis Of Changes In The Fatwa Of The Indonesian Ulema Council Due To Recent Scientific Findings)," *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 2 (2023): 120–37, <https://doi.org/10.18592/sjhp.v23i2.11361>; Arifah Millati Agustina dan Nor Ismah, "Challenging Traditional Islamic Authority: Indonesian Female Ulama and the Fatwa Against Forced Marriages," *Journal of Islamic Law* 5, no. 1 (29 Februari 2024): 125–46, <https://doi.org/10.24260/jil.v5i1.2319>; M. Ridho Ilahi dkk., "Fatwa Institutions in Handling Religious Blasphemy Crimes in Indonesia and Malaysia," *Al-Ahkam* 34, no. 1 (30 April 2024): 33–62, <https://doi.org/10.21580/ahkam.2024.34.1.18624>; Ayu Rahayu Nurhalizah dan Ach Fageh, "Future Gold Commodity: Indonesian Ulema Council Vs Lajnah Daimah Lil Buhuts al-'Ilmiyyah Wal Ifta," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (31 Januari 2022): 1–10, <https://doi.org/10.31958/juris.v21i1.3647>; Abd Rauf Muhammad Amin dkk., "Problematic Fatwa: An In-Depth Sociological Investigation of MUI's Fatwa on Supporting Palestine's Struggle," *El-Ussrah: Jurnal Hukum Keluarga* 7, no. 1 (1 Juli 2024), <https://doi.org/10.22373/ujhk.v7i1.22020>.

<sup>62</sup> Muhamad Izazi Nurjaman dan UIN Sunan Gunung Djati, "Eksistensi Kedudukan Fatwa Dsn Mui Terhadap Keberlangsungan Operasional Bisnis Di Lembaga Keuangan Syariah," *AL-IQTISHOD: Jurnal Pemikiran dan Penelitian Ekonomi Islam* 9, no. No. 2 (Juli 2021): 55–67.

<sup>63</sup> Mohamad Baihaqi Alkawy, "Legitimasi Majelis Ulama Indonesia (MUI) Dalam Kontestasi Islam Politik Mutakhir," *Politea: Jurnal Politik Islam* 2, no. 2 (29 November 2019): 19–48, <https://doi.org/10.20414/politea.v2i2.1477>.

<sup>64</sup> Mulida Hayati dan Nuraliah Ali, "Husband's Sexual Violence: Protection Rights for Wives in Terms of Islamic and Indonesian State Law," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 21, no. 1 (30 Juni 2021): 65–81, <https://doi.org/10.30631/alrisalah.v21i1.662>.

<sup>65</sup> Putri dan Nugroho, "Fakta Ibu Bunuh Anak Kandung di Brebes, Kronologi Kasus, Korban hingga Pelaku Diduga Depresi."



From the discussion, three critical insights emerge regarding the formulation of fatwas on psychical violence: First, the need for harmonisation between Positive law and Islamic law. Harmonisation in law aims to achieve balance and compatibility among legal norms within regulations.<sup>66</sup> As previously discussed, Indonesia has three types of laws that may apply concurrently or overlap. In the context of psychical violence, there are several intersections or normative gaps in conceptualisation between Islamic and Positive law. While Positive law formally applies, Islamic law serves sacredly as a guide for Muslims' lives. In this scenario, it is necessary to address these intersections and misalignments, requiring further clarification on which laws should apply or how to ensure these laws operate in harmony. Fatwas, as the only form of law, can answer this intersection and contribute to further clarifying the forms of psychical violence according to Islamic law. Although not in the position of the hierarchy of applicable legislation,<sup>67</sup> positive law and Islamic law must still be harmonised.<sup>68</sup> Legal disharmonisation will lead to legal uncertainty that can cause disturbances in public life, disorder and a sense of unprotection. In such a perspective, the issue of legal certainty will be perceived as a necessity that can only be realised through harmonisation of the legal system.<sup>69</sup> The fatwa is expected to harmonise the basic concept of psychical violence stipulated in Article 7 of the Law on Domestic Violence with the interpretation of psychical violence according to Islamic law.

Second, fatwas have social power. The only guideline for Indonesian Muslims when there is a *vacuum of the norm*, *conflict of norm* and *vague norm* is Fatwa. Fatwas can provide legitimacy and become the juridical and moral basis for law enforcement. Fatwas must be issued by institutions or groups of scholars who have authority in the religious field, in this case, it is a fatwa from the Indonesian Ulema Council. Fatwa is *ijma'* ulama, which can serve as a legal basis. The adherence to fatwas reflects the commitment of the Muslim community to the *nash*, which serves as the basis for issuing fatwas. Often, fatwas are the primary guidance for Muslims. For example, during the 7th *Ijtima* Ulama Fatwa Commission of the Indonesian Ulema Council in Jakarta, from November 9-11, 2021, cryptocurrency was declared impermissible as a currency. At that time, cryptocurrency had not been formally regulated by law. This decision significantly influenced social behaviours during a period when cryptocurrency usage was increasing. Another instance demonstrating the social impact of fatwas is the issuance of MUI Fatwa Number 83 of 2023, which deemed it unlawful to support Israeli aggression against Palestinians or entities supporting Israel, whether directly or indirectly. This fatwa galvanised public movements to boycott products from companies perceived as supporting Israeli aggression against Palestine. As a result, the Association of Indonesian Shopping Center Retailers and

<sup>66</sup> Yeni Nel Ikhwan dan Khairani Khairani, "Kerangka Hukum Harmonisasi Peraturan Daerah Dalam Perspektif Teori Hirarki Perundang-Undangan," *Nagari Law Review* 7, no. 2 (1 Februari 2024): 401, <https://doi.org/10.25077/nalrev.v.7.i.2.p.401-419.2023>.

<sup>67</sup> Yuliana, Nasarudin, dan Perdana, "ANALISIS YURIDIS KEDUDUKAN FATWA MUI DALAM SISTEM KETATANEGARAAN DI INDONESIA (STUDI KASUS FATWA MUI NOMOR 33 TAHUN 2018 TENTANG PENGGUNAAN VAKSIN MEASLES RUBELLA DI KOTA BANDAR LAMPUNG)," 15 Agustus 2022.

<sup>68</sup> Ramdan Wagianto, "Harmonisasi Hukum Adat dan Hukum Agama dalam Perkawinan Adat Masyarakat Osing Banyuwangi," *Proceedings of Annual Conference for Muslim Scholars* 6, no. 1 (15 April 2022): 49–59, <https://doi.org/10.36835/ancoms.v6i1.334>.

<sup>69</sup> Kusnu Goesniadhie Slamet, "Harmonisasi Hukum dalam Perspektif Perundang-Undangan" 11, no. 27 (September 2004), <https://journal.uui.ac.id/IUSTUM/article/view/4905/4341>.



Tenants (Hippindo) reported a 40 per cent drop in sales within the retail and restaurant sectors.<sup>70</sup> This illustrates that although fatwas are not legally binding, they significantly influence Muslim behaviours as they originate from respected scholars and religious institutions

Third, the fatwa of psychical violence serves as a source of material law. In addition to the Qur'an and al-Hadith, fatwas can be used as a source of material law when constructing a law. In this case, fatwas are considered as *ijma'* ulama that are socially recognised.<sup>71</sup> Even fatwas issued by the MUI are often used as the substance of legal formation, such as fatwas regarding sharia economic law.<sup>72</sup> Fatwas serve as a bulwark to provide limits to unclear norms that are in line with Islamic teachings. Fatwas can provide a solid basis for policymakers and legislators in drafting more formal regulations. Fatwas can shed light on concepts that may not have been specifically regulated in positive law, providing religious interpretations that aid in the legislative process.<sup>73</sup> Although it does not have binding legal force, fatwas can be a consideration for law enforcement officials and judicial institutions in deciding cases of psychical violence that are not explicitly regulated in applicable law.<sup>74</sup>

## Conclusion

The meaning of psychical violence, according to current law, is still considered unclear, widening, and depending on the subjectivity of the victim and judges. Similarly, according to Islamic law, a fatwa on psychical violence is needed in family law enforcement in Indonesia. This fatwa can be used as a basis for law enforcement to handle cases of psychical violence in families, especially Muslim families. In this case, Fatwas can provide legal certainty for the parties involved. From the description above, several reasons can be gathered about the urgency of forming fatwas for the criminal act of psychical violence, namely: first, harmonisation between Positive law and Islamic law regarding the crime of psychical violence. The fatwa is expected to harmonise the basic concept of psychical violence stipulated in Article 7 of the Law on Domestic Violence with the interpretation of psychical violence according to Islamic law. Second, fatwas have social power. This means that although fatwas are not legally binding, they provide guidelines that Muslims follow because they come from respected scholars and religious institutions. Third, the fatwa of psychical violence as a source of material law. In addition to the Qur'an and al-Hadith, fatwas can be used as a source of material law when constructing a law. In this case, fatwas are considered as *ijma'* ulama that are socially recognised. The results of the study

<sup>70</sup> Septyaningsih, "Dampak Boikot Produk Israel, Hippindo Sebut Ada Penurunan Penjualan Hingga 40 Persen," *Republika.co.id*, 28 November 2023, <https://ekonomi.republika.co.id/berita/s4tv95502/dampak-boikot-produk-israel-hippindo-sebut-ada-penurunan-penjualan-hingga-40-persen#:~:text=REPUBLIKA.CO.ID%2C%20JAKARTA,%22Sudah%20ada%20angka%20penurunan.>

<sup>71</sup> Bisyril, "Fatwa as a Tool of Social Engineering."

<sup>72</sup> Masrurah dan Palangkaraya, "Urgensi Fatwa Mui dalam Pembangunan Sistem Hukum Ekonomi Islam di Indonesia."

<sup>73</sup> Ahmad Insyah Ansori dan Moh. Ulumuddin, "Kedudukan Fatwa Majelis Ulama Indonesia (MUI) Dalam Hukum Islam," *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam* 5, no. 1 (13 Juni 2020): 37–56, <https://doi.org/10.25217/jm.v5i1.755>.

<sup>74</sup> Yuliana, Nasarudin, Dan Perdana, "Analisis Yuridis Kedudukan Fatwa Mui Dalam Sistem Ketatanegaraan Di Indonesia (Studi Kasus Fatwa Mui Nomor 33 Tahun 2018 Tentang Penggunaan Vaksin Measles Rubella Di Kota Bandar Lampung)."



imply that it is essential to make a clear and detailed Fatwa on psychical violence, harmonise between customary law, positive law and Islamic law while clarifying the differences. This can be done in collaboration between scholars and policymakers. For the limitation, this study only discusses the critical reasons for the formation of fatwas regarding psychical violence in the household without discussing the points in detail regarding what should be explained in the fatwa concerned. Some differences and intersections regarding psychical violence in the discussion are also not entire, only limited to the typology that the author made based on court decisions from 2020 to 2021.

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