

## WIFE PROTECTION OF VIOLENCE MEASURES IN HOUSEHOLD ACCORDING TO ISLAMIC LAW PERSPECTIVE

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### Abstract

*Women are life partners for men and vice versa. In the arrangement of family and social life, it can be seen that women always sacrifice for the happiness of men. Women are willing to suffer for their husbands and children. The development of protection for women in Indonesia can be linked to national legislation, which is increasingly complex with the issuance and enactment of Law No. 23 of 2004 concerning the Elimination of Domestic Violence. The purpose of this study is to analyze the existence of law number 23 of 2004 concerning the elimination of domestic violence in regulating domestic life, especially in the relationship between husband and wife, analyzing Islamic legal views on domestic violence, analyzing criminal law policies against criminal acts domestic violence. This type of research can be said is a type of legal research. The nature of this research is descriptive, that is, the nature of research that describes or explains. Data analysis is performed by following the problem, thus all problems with the support of secondary data and primary data can be answered perfectly. The results of this study are that Islam has governed the matter of the relationship between husband and wife who are bound in a domestic relationship if, without justifiable reasons a wife rejects the husband's request, then given Islamic law, the act is sinful. Therefore Islam considers that the rules contained in Law No. 23 of 2004 concerning the Elimination of Households specifically concerning sexual relations between husband and wife in line with Islamic law, then Islamic law considers these rules to be obeyed, otherwise if the rules in Law No. 23 of 2004 concerning the Elimination of Domestic Violence, contrary to Islamic law, Islamic law considers the issue unfit to follow. Domestic Violence can be charged with criminal penalties, while through non-penal policies, efforts will be made to prevent violence before the crime of domestic violence occurs.*

**Keywords: Wife Protection, Violence Measures, Household According**

### I. INTRODUCTION

Women are life partners for men and vice versa. In the arrangement of family and social life, it can be seen that women always sacrifice for the happiness of men. Women are willing to suffer because of their husbands and children. Men want to suffer because they think about their interests, now or in the future. Men call it normal, or not strange. But if this is about

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women, then she will face a dilemma as a cheap woman. The position of women is not strong enough in society to influence their behavior. She must adjust herself to the desires of the ruling man.

It is a fact in the life of mankind that women are always in a position disadvantaged by the actions of men. For example, the abusive and abusive treatment that a husband does to his wife. From this fact, the makers of the Civil Code give special attention to women, so that the Civil Code Book explicitly in its articles has provided protection. The losses suffered are not only material but also immaterial which include emotional and psychological shocks that directly or indirectly will affect his future, his personal life, his children's career, and his family. The moral or material loss suffered by a daughter. A girl or who has a husband is the same weight, if he is faced with the consequences of violence committed by a man, both in the status as a father, husband or brother.

Considering that more than half of Indonesia's population are women, then acts of violence against women if not quickly anticipated and addressed, both the quality and quantity are feared to increase, and ultimately will have an influence on the peace of the wider community, because instead family is the basis of society. A woman family member who is a victim of a violent crime and suffers from emotional shock, will directly or indirectly have a negative influence on her family and ultimately on the community in her environment.

Although the material loss and immaterial suffering must be borne by women, it seems that the legislation in Indonesia is still not giving adequate attention to the gender of the victim. The development of protection for women in Indonesia, when linked to national legislation applies complex legislation with the issuance and approval of Law No. 23 of 2004 concerning the Elimination of Domestic Violence. Whatever should be given by this law, in particular, the protection of violence against women in the household, the big question especially for the culture of Indonesian people who are Muslim, is whether the law does not exceed the normal limits that live during the Islamic community itself.

Society and Islamic teachings give a position to the husband as the leader of the family. This position justifies the husband committing violence against his wife. However, if this problem is related to Law number 23 of 2004 concerning the elimination of domestic violence, it will cause conflict especially if it is stipulated in Article 8 of Law Nor 23 of 2004 which reads:

Sexual violence as referred to in article 5 letter e includes:

- a. Forced sexual relations are carried out on people who set within the

scope of the household

b. Forced sexual relations with one person in the scope of his household with another person for commercial purposes and/or certain purposes. People who determine in the household as determined in article 2 (1) of Law Number 23 the year 2004 include:

1. Husband, wife, and children
2. People who have family relationships with people as referred to in word a because of blood, marriage, dairy, nurturing and guardianship arrangements that establish in the household

c. People who work help the household and settle in the household

So, in this case, the husband and wife are those who set within the scope of the household and if the husband forces his will to have sexual relations with his wife, the husband can be said to have committed sexual violence according to law no. 23 of 2004.

But if you have Islamic law, it is even very beautiful to say in the hadith that if the wife is fasting (sunnah) and the husband wants sexual relations then the wife must cancel the sunnah fasting.

So the above problem is very interesting, especially in this case the birth of law No. 23 of 2004 seems to imitate foreign (western) culture to be established in Indonesia. The purpose of this study is to analyze the existence of law number 23 of 2004 concerning the elimination of domestic violence in regulating domestic life, especially in the relationship between husband and wife, analyzing Islamic legal views on domestic violence, analyzing criminal law policies against criminal acts strangeness in the household.

## **II. METHOD**

This type of research can be said is a type of legal research. Because the focus of the author's attention on the protection of his wife against domestic violence from the perspective of Islamic law, the main study is the normative rule of law, the type of legal research chosen is normative legal research. According to Zainuddin Ali, normative legal research includes research on legal principles, research on legal synchronization, research on legal systematics, research on legal comparison and research on legal history.

The nature of this research is descriptive, namely research that is expositing or explaining. As a comparison of research according to its nature can be broken down into 3 things, namely exploratory (exploratory), descriptive (explaining) and explanatory (hypothesis testing)

To obtain data in this study, the authors use data sourced from the library (library research) as the main source. Supporting data sources are field data that the author obtained from respondents such as court judges, both district courts who handle criminal cases in the household in a criminal way or from religious court judges who resolve divorce cases as a result of domestic violence (field research)

For secondary data, the writer uses a tool called document study, which is searching the literature, especially in the UPMI field literature and the District Court Literature, Religious Court Literature and the North Sumatra Regional Public Library. Meanwhile, to obtain primary data from the respondents (Judges PA and PN), the authors used interview tools using interview guidelines.

The data obtained will then be classified according to needs and analyzed qualitatively which is described in sentence form per under the discussion to be carried out. Data analysis is performed by following the problem, thus all problems with the support of secondary data and primary data can be answered perfectly.

### **III. RESULT**

#### **1. The existence of law number 23 of 2004 concerning the elimination of domestic violence especially in intimate relations between husband and wife**

Islamic law is so complex and so complete, that all worldly problems can be solved through the Qur'an and the hadith of the prophet. It's just the subsequent development of human life relations that occur not only between fellow Muslims but also includes Muslims with other religious communities. Such conditions, especially in Indonesia, which is not an Islamic State, are the result of national laws that govern them.

The existence of law number 23 of 2004 in regulating domestic life, especially in intimate relations between husband and wife is very poorly understood, this is due to couples who have marriages have had to rely on wading through the household by following the background between husband and wife based on the provisions of Islamic law sourced from the Qur'an and the Hadith of the Prophet.

Whereas the matters as referred to in law number 23 of 2004 such as violence and its consequences are regulated in national law, namely the criminal law book or in other words, if there are women both wives and children, where the violence has unfavorable effects on the wife, the wife also has the authority to report the matter to the authorities that there has been domestic violence.

Even more interesting is the existence of law number 23 of 2004 with intimate relations between husband and wife, especially article 8 of law number 23 of 2004.

Sexual violence as referred to in article 5 letter e includes:

- a. Forced sexual intercourse carried out against people who settled within the scope of the household
- b. Forced sexual relations with one person in the scope of his household with another person for commercial purposes and/or certain purposes.

If judging the existence of article 8 above with domestic life, it can be said that the law is very excessive and lacks its place, especially in intimate relations between husband and wife.

As a comparative study between article 8 of law number 23 of 2004 with Islamic law, especially about to with intimate relations between husband and wife, it can be seen a hadith narrated by Ibn Umar, he said that a woman met Rasullullah SAW and ask him:

"O Messenger of Allah, what is the wife's obligation to her husband?" Rasulullah SAW replied: "he must not give anything from his home except with his permission (husband). If he does, then his share (husband) is rewarded and for him (wife) sin". He repeated his question, "O Messenger of Allah, what else is his wife's obligation to her husband?" Then the Messenger of Allah answered: "He must not leave his house except (get) his permission. And he must not fast (sunnah) except with his permission". From the hadith quoted above, it is clear that even if a wife is fasting the sunnah but her husband wishes for intimate relations, then the wife is obliged to cancel her sunnah fasting and serve her husband's wishes. Thus Islam governs beautifully the relationship between husband and wife.

But the fact is very different from what is regulated in law number 23 of 2004, where if the wife does not want intimate relations while her husband wants, then the husband can be held accountable for having committed violence against his wife, but if the act of a husband is carried out against his child or another woman who is not his wife in the scope of his household, then it certainly needs to be followed up with other legal remedies

The marriage contract in Islamic law is not the same as the ownership contract. The marriage contract is bound by observing the obligations between the two. In this case, the husband has heavier obligations than his wife based on his word. Husbands, however, have one level of strength over their wives. The word one level of strength can be interpreted in His words: "Men are leaders for women" (Surah An-Nisa,

verse 34)

But sometimes it is impossible to know care about the rights of wives and their obligations between people in association with them and with their families. Besides that, there are different customs, which make it difficult to classify the rights and obligations

So the above verse that uses a short sentence has explained the important rules in building a household ark. The above verse provides a benchmark for consideration when treating his wife, so he must consider it first.

Regarding these matters, Ibn Abbas said:

"Before I command something to my wife, then I will consider it first, as he always does that to me"

In this case, the obligation of husband and wife does not mean it must always be the same. It means the balance of the rights and obligations of a husband and wife is the creation of a mutually beneficial relationship (symbiotic mutualism), each other must complement each other. Therefore, the work that can be done by men, the husband must take over, and vice versa. Thus, both have the same obligations and the same work. As both have the same feeling.

Besides, both husband and wife, are fully human beings who have the mind to think and have a heart that can feel like or hate. So it is not fair if a husband makes his wife a slave that he considers inferior and must live it. Vice versa. Domestic life will not be happy, except for one another trusting, caring and both carry out their respective duties properly. Actually when viewed from the existence of the birth of law number 23 of 2004 is due to world pressure and also the limitations of the criminal law book. The criminal law does not differentiate the gender of the perpetrator and the victim of a crime whether male or female, whereas in reality, the loss suffered by a female victim is far greater than that of a male

The loss suffered is not material but also immaterial which includes emotional and psychological shock which directly or indirectly will affect his future, personal life, career, children and family. The definition of violence against women according to item 113 of the 4th world conference report on women held in Beijing on 4-15 September 1995 is: "Any act of violence based on gender that causes or can cause physical, sexual or psychological harm or suffering to women, including threats to carry out such acts, coercion or deprivation of liberty, whether that occurs in public or private life"

The loss suffered by a woman, a girl or who has a husband is

equally severe if he receives the consequences of violence from a man, whether in the status of the father, brother or husband. Considering that more than half of Indonesia's population is women, violence if against women is not quickly anticipated and addressed, both the quality and quantity are feared to increase and eventually will have an influence on the peace of the wider community because the family is the basis for the growth and development of society.

A woman family member who is a victim of a violent crime and suffers from emotional shock, will directly or indirectly have a negative influence on her family and ultimately on the community in her environment.

Although the material loss and immaterial suffering that must be borne by women is very large, it seems that the legislation in Indonesia that still does not give proper attention to the victim's gender.

From the above explanation, it can be understood that a fundamental thing which is a condition that causes violence to women is about the existence of the law itself, especially the Criminal Code which does not distinguish the gender of victims from violence. Yet the consequences of violence received by a man and a woman are enormous. A woman who is a victim of violence is certainly devastated after the events she has endured, maybe even she will carry the suffering throughout her life. Due to the lack of discrimination in the treatment of women, the perpetrator of violence considers that if he acts violently against women, he will not be severely punished. So as such, he prefers to choose his victim's women than men.

The consequences above are also natural interpretations of the woman herself as a weak creature, which in the next interpretation is said to be under the protection of men. Other circumstances that cause acts of violence against women are criminal disparities. Considering that the criminal law book only regulates the type of criminal and maximum criminal threats, while the set of criminal guidelines that are regulated are still very limited, the discretion of imposing a criminal sentence given to a judge is very large. The consequence is that in the practice of punishment a disparity can be seen which is sometimes very conspicuous for similar crimes and perpetrators who have a similar background. To the victims, this can lead to feelings of unfairness which can result in a lack of respect for the law, even filtering into a judge himself.

The above description can be explained as follows. That such a rape crime event is assumed. In the trial process in the rapist court, 25 years of imprisonment are required based on Criminal Code provisions. After it

was proven in court that it was true that the perpetrator had raped and the judge decided on the law for 5 years. This difference in sentences constitutes a criminal disparity in which, the sentence given by the law for 25 years is not determined by the judge. The judge even sentenced the perpetrators of violence for 5 years, with reasons that alleviated the perpetrators

Sentencing for 5 years certainly does not satisfy the rape victim, especially the woman. So in this relationship women assume that the law has not been applied unfairly to him, because he has done a criminal disparity. The above situation also gives consequences to those who commit violence to choose women's victims, because in addition to being easy and easy and not giving resistance, they also think that if they are caught and proven to have committed a violent crime then in the trial in court, the court will give light punishment -light

## **2. The view of Islamic law towards law number 23 of 2004**

Before elaborating on the discussion because it is better we first look at what is quoted in the Qur'an Surah An-Nisa verse 34, which is translated:

"...And the women that you fear for their iniquity advise them and separate themselves from their beds and beat them up then if they obey you, then do not look for a way to trouble them"

This verse does not want the husband to act rudely towards his wife in words or physical actions without any possible cause. if doing so, women are entitled to legal protection. No examples can be cited to explain the detailed case procedure like this. Islamic law is humane enough to ask the court to heal the complaints of women's hearts in matters that are



unfavorable to our society, the hurtful treatment of wives seems to be still a matter of course

In Islamic society, women occupy an important position that never happened before. There were no laws or regulations before Islam that gave rights to women as given by Islam. This is due to Islam coming with the principle of equality among all people. There is no difference between one individual and another individual. Because Allah SWT created all humans from one origin. Allah Almighty says in surah al-Gujarat verse 13 which translates: "O humans, we created you from a man and a woman and made you nation and tribe"

Article 8 of the Law on the Elimination of Domestic Violence states that:

1. Forced sexual relations that are carried out against other people and who live within the scope of the household
2. the coercion of sexual relations with a person within the scope of his household with another person for commercial purposes and/or certain purposes

Article 46 states that: "Every person who commits sexual violence as referred to in article 8 letter a is sentenced to a maximum imprisonment of 12 years or a maximum fine of Rp. 36,000,000 (thirty six million rupiah)".

The requirements of articles 8 and 46 above can also be seen in the regulation in article 53 of law number 23 of 2004 which reads: "The crime of sexual violence as referred to in article 46 committed by the husband against his wife or vice versa is a complaint offense".

From the three sounds of the article above it can be seen that one form of sexual violence is that there is a forced relationship between husband and wife. So that the wife can report her husband to the authorities who have committed violence, with criminal charges for 12 years or a fine of Rp.36,000,000 (Thirty-six million).

One thing that cannot be understood in this case, especially according to Islam about the meaning of the word coercion itself is the process, method, action, force. While forcing means treating the order, ask by force.

With the meaning of the word coercion above, it can be seen that there are parties who initially asked, but those who asked did not want it, then coercion occurred. If this is related to sexual relations, then the husband asks before coercion to have sexual relations as with his wife, but the wife refuses so coercion occurs.

If the refusal of the wife that causes the warming of Islamic law is drawn then it can be said that the wife has done an act of wrath by God by

following the hadith of the prophet narrated by Ibn Umar, he said that a woman met Rasulullah SAW and asked him "O Rasulullah, what is the wife's obligation to her husband?". Rasulullah SAW answered: "She must not have a wife presenting anything from her home except with her permission (husband). If she does, then for her (husband) the reward for her (wife) is a sin. Then Rasulullah SAW answered: "he must not go out from his house except (get) his permission. And he must not fast (sunnah) except with his permission".

With this hadith, it can be understood that a wife who refuses sexual relations with his wife is a wife who does not obey the teachings of Islam. Thus it can also be said that the existence of law number 23 of 2014 is contrary to Islamic law.

### **3. Criminal/ Penal Policy**

The penal policy that is applied to perpetrators of criminal acts in domestic violence is to impose penalties for the perpetrators of the crime itself. As the author has stated above with the issuance of Law number 23 of 2004 concerning the elimination of domestic violence, the government has given birth to a criminal law policy that is penal in the sense of giving severe sanctions to perpetrators of domestic violence.

The term criminal policy (penal policy) can also be referred to as "criminal law politics" In foreign, decisions the term criminal law politics is often known by various terms including "criminal policy", "Criminal Law policy" or "Strafrecht Politiek". Prof. Sudarto stated that the politics of criminal law means, how to endeavor or create and formulate a good criminal lawyer. Therefore talking about the politics of criminal law means talking about science and art as well as aiming at enabling positive legal regulations to be formulated better

Furthermore, A Mulder states that "Strafrecht Politiek", is the policy line for determining:

- a. The extent to which the provisions of the applicable criminal provisions need to be changed or updated
- b. What can be done to prevent criminal acts
- c. How prosecution and judicial investigations and criminal conduct must be carried out

Mulyadi said that the politics of criminal law is an attempt to determine the direction in which Indonesian criminal law will be implemented in the future by looking at its current enforcement. according to Mahmud Mulyadi, this is related to the conceptualization of criminal law that is best applied.

In connection with the problem of violence that occurs in the

household of the government of the Republic of Indonesia, it has adopted a criminal law policy as stipulated in Law number 23 of 2004 concerning the elimination of violence in the household. In this law, the Indonesian government has dared to make a breakthrough, namely by increasing the penalties for perpetrators of domestic violence.

The author mentioned aggravated because, if what is used as the basis for punishing perpetrators of violence is the criminal law (KUHP) then the penalties that can be imposed on perpetrators are as follows:

1. If Article 285 of the Criminal Code is imposed on sexual intercourse with violence and threats of violence, then the sentence is a maximum of 12 years imprisonment
2. If taxable is Article 351 (1) of the Criminal Code regarding persecution, the threat of punishment is a maximum imprisonment of 2 years 8 months or a maximum fine of 3 years
3. If Article 351 (2) of the Criminal Code is used regarding torture that causes serious injuries, then the sentence is a maximum of 5 years in prison.
4. If imposed is Article 351 (3) of the Criminal Code concerning torture resulting in death, the sentence shall be a maximum of 7 years.
5. If what is imposed is article 352 (1) of the Indonesian Criminal Code concerning maltreatment that does not cause illness or obstruction to carry out occupational positions or searches are threatened, as minor maltreatment, with a maximum of 3 months imprisonment or a maximum fine of Rp300,000
6. If what is imposed is article 353 (1) of the Criminal Code concerning premeditated maltreatment, is punishable by imprisonment for a maximum of 4 years
7. If what is imposed is Article 353 (2) of the Criminal Code concerning criminal torture in a planned manner which causes the victim to be seriously injured, then the guilty person shall be subject to a maximum imprisonment of 7 years.
8. If what is imposed in article 353 (3) of the Criminal Code is a criminal offense that is planned and that results in death, then the offender is subject to a maximum of 9 years' criminal sentence.
9. If what is imposed is article 354 (1) of the Criminal Code concerning severe maltreatment, then the offender is sentenced to a maximum imprisonment of 8 years
10. If what is imposed is article 354 (2) of the Criminal Code concerning severe persecution resulting in death, then the guilty person shall

be subject to a maximum sentence of 10 years.

11. If what is used is article 355 (1) of the Criminal Code concerning severe persecution carried out with a prior plan, then the perpetrator is threatened with a maximum imprisonment of 12 years
12. If what is imposed is article 355 (2) of the Criminal Code concerning severe persecution resulting in death, then the offender is subject to a maximum imprisonment of 15 years

But in Law number 23 of 2004, it appears that the threat of punishment to perpetrators of domestic violence has been far more severe. This can be seen article 44 of Law number 23 of 2004 states:

- 1) Every person who commits an act of physical violence within the scope of the household as referred to in article 5 letter a is convicted with a maximum sentence of 5 years or a maximum fine of Rp.15,000,000 (fifteen million rupiahs)
- 2) In the case of the acts as referred to in paragraph (1) resulting in the victim getting sick or having a serious injury with a maximum imprisonment of 10 years or a maximum fine of Rp.30,000,000 (thirty million rupiahs)
- 3) In the case of acts as referred to in paragraph (2) resulting in the death of the victim, shall be punished with a maximum imprisonment of 15 years or a maximum fine of Rp.45,000,000 (forty-five million rupiahs)
- 4) In the case of acts as referred to in paragraph (1) committed by the husband against his wife or vice versa which does not cause illness or obstruction to carry out work, position or livelihood or daily activities, shall be sentenced to a maximum of 4 months imprisonment or a maximum fine a lot of Rp 5,000,000 (five million rupiahs)

Article Law number 23 of 2004 states:

- 1) Every person who commits an act of psychological violence within the scope of the household as referred to in article 5 letter b is sentenced to a maximum imprisonment of 3 years or a maximum fine of Rp 9,000,000 (Nine Million rupiahs)
- 2) In the case of acts as referred to in paragraph (1) carried out by the husband against his wife or vice versa which does not cause illness or circles to carry out occupational positions or livelihood or daily activities, in a maximum of 4 months imprisonment or a maximum fine of Rp. .36,000,000 (Thirty-Six million rupiahs)

Article 46 of Law number 23 of 2004 states:

Every person who commits an act of sexual violence as referred to in article 8 letter is sentenced to a maximum imprisonment of 12 years or a maximum fine of Rp.36,000,000 (Thirty-Six Million Rupiahs)

Article 47 states:

Everyone who compels a person who determines in his household to have sexual relations as referred to in article 8 letter b shall be sentenced to a maximum imprisonment of 14 years and maximum imprisonment of 15 years or a fine of at least Rp. 12,000,000 (twelve million rupiahs) or a maximum fine of Rp. 300,000,000 (three hundred million rupiahs). Article 4 article 48 number 23 of 2004 states in the case of acts referred to in article 46 and many Rp.300,000,000

Article 47 causes the victim to receive a wound that does not give hope that he will recover at all, suffering from mental or psychiatric impairments for at least 4 weeks continuously or 1 year in a row without death or death of the fetus in the womb or resulting in malfunctioning of the reproductive organs in the criminal with a maximum imprisonment of 5 years and a maximum imprisonment of 20 years or a fine of at least Rp.25,000,000 (twenty-five million rupiah) and a fine of no more than Rp.500,000,000 (fifteen million rupiahs)

Article 49 of Law number 23 of 2004 states:

Be sentenced to a maximum imprisonment of 3 years or a maximum fine of Rp. 15,000,000 (fifteen million rupiahs) for each person who:

- a. Neglecting others within the scope of his household as referred to in article 9 paragraph (1)
- b. Abandoning others as referred to in article 9 paragraph 2 article 50 of Law number 23 of 2004 states:

Other than criminal as referred to in this chapter the Judge may impose additional crimes in the form of:

- a. Restriction of good behavior that aims to bring down the offender from the victim within a certain distance and time, as well as limiting certain rights of the offender.
- b. Determination of the perpetrators follows the counseling program under the supervision of a particular institution

Judging from the legal sanctions, it can be stated that the government of the Republic of Indonesia has adopted a policy of incriminating penalties for perpetrators of domestic violence. The aim is none other than to reduce the number of criminal acts in domestic

violence and protect women from the treatment of domestic violence. This policy is a criminal law policy contained in the provisions of positive law in force. But as said by Mahmud Mulyadi "is it possible that punishment can be used as an instrument to prevent crime?" This problem arises according to him because so far there have been many assumptions that punishment does not reduce the occurrence of crime but instead adds to and makes crime more prevalent. Therefore, efforts to prevent crime from occurring need to be made of a non-penal policy.

### **Non-criminal Policy**

The non-criminal policy and its relation to the legal policy against domestic violence are other sanctions imposed by the court outside the criminal sanctions as stated in article 10 of the criminal law (criminal code) criminal sanctions imposed outside of these criminal sanctions known as a criminal sanction for imposing two sanctions in one decision for a criminal offense called the "Double Track System". The difference between criminal sanctions and action sanctions is that criminal sanctions aim at penalties for the perpetrators of criminal acts, whereas sanctions for actions aim to help the offender change.

Non-criminal policy (non-penal policy), is a policy that combines crime that focuses on "preventive" (prevention of deterrence and know control). This policy needs to be taken as an effort to prevent crime from happening. This is realized considering, through a mere penal policy, indicated, crime is not reduced. As said by Mahmud Mulyadi in the previous description, there is an assumption that punishment (penal policy) does not reduce the occurrence of crime, it adds and makes crime more prevalent. What Mahmud Mulyadi said, is in line with what Rubin said that "punishment (whatever its nature is intended to punish or to remedy) has little or no influence on the problem of crime". Therefore it is necessary to think of policies that are non-penal to suppress the high level of crime.

Considering that efforts to tackle crime through non-criminal channels are more of a preventative measure for the occurrence of crimes, the main objective is to deal with the conducive factors that cause the crime. Barda Nawawi Arief mentioned the conducive factors, among others, to focus on problems or conditions of social conditions that can directly or indirectly cause or foster crime.

Some social aspects identified as factors of production of crime include:

- a. Poverty, unemployment, illiteracy, the absence or lack of adequate housing and a system of education and training that is not suitable

or compatible.

- b. Increasing the number of people who have no prospect (hope) because of the social integration process, also because of the poor social inequalities
- c. The slackening of social and family ties.
- d. Circumstances or conditions that make it difficult for people who immigrate to cities or other countries
- e. The destruction or destruction of the original cultural identity, which together with racism and discrimination causes loss or weakness in the social, welfare and work environment
- f. The decline and decline (quality) of the urban environment that encourages increased crime and reduced (inadequate) services for the neighborhood and neighboring facilities.
- g. Difficulties for people in modern society to integrate as appropriate in their community, family or family environment, place of work or school environment
- h. Misuse of alcohol, drugs and, others whose use is also expanded because of the factors mentioned above
- i. Widespread organized criminal activity, especially drug trafficking and fauna and stolen goods. encouragement (specifically by Mass media) about ideas and attitudes that lead to acts of violence, inequality (rights) or intolerant attitudes (intolerance)

One of the non-penal channels to overcome social problems as stated above is through the "social policy" social policy paths that can be taken are:

- a. Cultivation of community mental health problems (social hygiene), both individually as members of the community as well as health or family welfare (including a child and adolescent welfare issues) as well as the wider community in general.
- b. Technological progress (Technoprevention) and exploiting potential preventive effects from law enforcement officials.

#### **IV. CONCLUSION**

- 1. Existence of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, in regulating domestic life, especially in relations between husband and wife, is very poorly understood, this is due to the couple who entered into the marriage already has a backrest in wading through his household per under the background between husband and wife by relying on the provisions of Islamic Law sourced from the AL-Qur'an and the

Hadith of the Prophet. While matters, as intended in Law Number 23 of 2004 such as violence and its consequences, are regulated in National Law, namely the Criminal Code or in other words if there are women, whether wives or children. , where the violence harms the wife, the wife has the authority to report the matter to the authorities that there has been violence in the household.

2. Islam has governed the matter of the relationship between husband and wife who are bound in a domestic relationship if without a justified reason a wife refuses the husband's request, then given Islamic law, the act is sinful. Therefore Islam considers that the rules contained in Law No. 23 of 2004 concerning the Elimination of Households specifically concerning sexual relations between husband and wife in line with Islamic law, then Islamic law considers these rules to be obeyed, otherwise if the rules in Law No. 23 2004 concerning the Elimination of Domestic Violence, contrary to Islamic law, Islamic law considers the issue unfit to follow.
3. The criminal law policy against criminal law on domestic violence is twofold, namely through a penal (criminal) policy and a non-penal policy, through a penal policy of a perpetrator of a domestic violence act that can be charged with criminal penalties, while through a non-penal policy, Efforts will be made that are ravaging before the crime of domestic violence occurs.

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