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**DOMESTIC VIOLENCE ACT: AN ANALYSIS BASED ON
ISLAMIC PERSPECTIVE**

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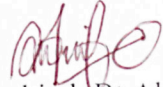
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AUTHOR DECLARATION

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

I hereby declare that the work in this academic project is my own except for quotation and summaries which have been duly acknowledged.

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“In the Name of Allah Most Merciful Most Compassionate”

Foremost, all praises be to Allah S.W.T. who has revealed a syariah to guide us life and sent the most noble Prophet, Muhammad P.B.U.H, to guide us in the best understanding of the law and its applications.

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والسلام

ABSTRAK

Keganasan Rumahtangga merupakan perkara yang sentiasa berlaku di dunia ini. Malaysia tidak ketinggalan dalam permasalahan ini. Kertas projek ilmiah ini membincangkan definisi keganasan rumahtangga dari segi perspektif Islam dan undang-undang di Malaysia. Penulisan ini juga memberikan alternatif kepada mangsa penderaan untuk mendapatkan perlindungan daripada undang-undang yang terdapat di Malaysia. Peruntukan seperti remedi yang boleh dituntut oleh mangsa sama ada kes penderaan itu melibatkan mangsa yang beragama Islam atau pun tidak. Sekiranya seorang mangsa itu beragama Islam apakah Akta yang harus digunakan untuk mengatasi masalahnya? Dan sekiranya mangsa bukan seorang Islam apakah Akta yang patut dirujuk olehnya? Adakah peruntukan untuk mangsa keganasan rumahtangga adalah sama? Persoalan-persoalan inilah yang dibincangkan di dalam projek ilmiah ini.

ABSTRACT

Domestic violence is a common matter in this world nowadays. It also happens in Malaysia. This project paper will discuss the problem and the exact definition of domestic violence from Islamic perspective and legal perspective in Malaysia. This academic writing also gives the alternatives to the domestic violence's victim to get protection by the court according to the provisions in the Malaysian legal system. The remedies provided under the law are examples on what the victim should apply to protect himself or herself. But the question is if the victim is a Muslim, what Act should be applied to him or her? And if the victim is a non-Muslim, what is the Act that should be applied to her or him? Is the legal provision to protect the victim of domestic violence similar? Is the Domestic Violence Act 1994 the only way for the victim to get protection from the court? Thus, this project paper will discuss the questions and try to highlight the suitable provisions to the victim.

الملخص البحث

يعتبر العنف العائلي مشكلة اجتماعية معاصرة في أنحاء العال عامة وفي ماليزيا خاصة. وهذه البحث يركز في تعريف العنف العائلي في منظور الإسلام وفي القضاء الماليزي. كما يركز فيه طريقة اختيارية لحل المشكلة لدى ضحية العنف العائلي في ماليزيا. ويمكن لضحية العنف العائلي سواء كان مسلما أو غير مسلم طلب الغرار العلاجي (*remedi*). وإذا كان مسلما فما هو القانون المستخدم لعلاج هذه القضية، وإذا كان غير مسلم فما هي علاجها؟ ومن هذا المنطلق، يهدف البحث معرفة الفرق في عقوبة العنف العائلي بين المسلم وغير مسلم.

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GLOSSARY

| | |
|-----------------------------------|---|
| Al-Quran: | the Holy Book revealed by Allah S.W.T to Prophet Muhammad S.A.W. |
| As-Sunnah: | the tradition of Prophet Muhammad S.A.W. including his deeds, saying and approval. |
| Hukum: | ruling of Syariah. |
| Hukum Syara'/Fiqh/ Islamic Law | practical laws of Islam |
| P.B.U.H.: | Peace Be Upon Him (<i>Sallallahu 'alaihiwasallam</i>) |
| Syariah: | the collection name for all the laws ordained by Allah S.W.T. for his servants through Prophet Muhammad S.A.W. including the Islamic systems of 'aqidah, akhlak, ibadah and mu'amalah |
| Fuqaha': | Islamic jurists |
| Jumhur Ulama' : | Majority of Ulama' |



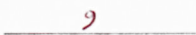
TRANSLITERATION TABLE

1) Letter

| <u>Arabic Letter</u> | <u>Latin Letter</u> | <u>Example</u> | <u>Transliteration</u> |
|----------------------|---------------------|----------------|------------------------|
| ء | ‘ | فار | <i>fa'r</i> |
| ب | b | برد | <i>burd</i> |
| ت | t | تل | <i>tall</i> |
| ث | th | ثوب | <i>thawb</i> |
| ج | j | جدار | <i>jidar</i> |
| ح | h | حليب | <i>halib</i> |
| خ | kh | خادم | <i>khadim</i> |
| د | d | ديك | <i>dik</i> |
| ذ | dh | ذهب | <i>dhahab</i> |
| ر | r | رفيق | <i>rafîq</i> |
| ز | z | زميل | <i>zamil</i> |
| س | s | سلام | <i>salam</i> |
| ش | sh | شعب | <i>sha'b</i> |
| ص | s | صخر | <i>sakhr</i> |
| ض | d | ضييق | <i>dayq</i> |
| ط | t | طالب | <i>talib</i> |
| ظ | z | ظالم | <i>zalim</i> |
| ع | ‘ | عقل | <i>'aql</i> |
| غ | gh | غلام | <i>ghulam</i> |
| ف | f | فيل | <i>fil</i> |
| ق | q | قلب | <i>qalb</i> |

| <u>Arabic Letter</u> | <u>Latin Letter</u> | <u>Example</u> | <u>Transliteration</u> |
|----------------------|---------------------|----------------|------------------------|
| ك | k | كلام | <i>kalam</i> |
| ل | l | لبّ | <i>lubb</i> |
| م | m | مال | <i>mal</i> |
| ن | n | نجم | <i>najm</i> |
| ه | h | هول | <i>hawl</i> |
| و | w | ورق | <i>waraq</i> |
| ي | y | يّم | <i>yam</i> |

2) Short Vowel

| <u>Arabic Letter</u> | <u>Latin Letter</u> | <u>Example</u> | <u>Transliteration</u> |
|---|---------------------|----------------|------------------------|
|  | a | كتب | <i>kataba</i> |
|  | i | علم | <i>'alima</i> |
|  | u | غلب | <i>ghuliba</i> |

3) Long Vowel

| <u>Arabic Letter</u> | <u>Latin Letter</u> | <u>Example</u> | <u>Transliteration</u> |
|----------------------|---------------------|----------------|------------------------|
| ي ، ا | a | عالم ، فتي | <i>'alim , fata</i> |
| ي | i | عليم ، داعي | <i>'alim , da 'i</i> |
| و | u | علوم ، أدعو | <i>'ulum , ad 'u</i> |

4) Diphthong

| <u>Arabic Letter</u> | <u>Latin Letter</u> | <u>Example</u> | <u>Transliteration</u> |
|----------------------|---------------------|----------------|----------------------------|
| و | aw | نوم | <i>nawm</i> |
| ي | ay | ليل | <i>layl</i> |
| يّ | iyy | شافعي | <i>shafi 'iyy (ending)</i> |
| وّ | uww | علوّ | <i>'uluww (ending)</i> |

5) Exception

- 5.1 Arabic letter ء (*hamzah*) found at the beginning of a word is transliterated to the letter "a" and not to '.

Example: أكبر transliterated to: *akbar* (not 'akbar).

- 5.2 Arabic letter ة (*ta' marbutah*) found in a word without ال (*al*) which is coupled with another word that contains ال (*al*) at the beginning of it is transliterated to the letter "t".

Example: مكتبة الإمام transliterated to: *maktabat al-imam*

However if the Arabic letter ة (*ta' marbutah*) found in a word with ال (*al*), in a single word or in the last word in a sentence, it is transliterated to the letter "h".

Example: المكتبة الأهلية transliterated to: *al-maktabah al-ahliyyah*

قلعة *qal'ah*

دار وهبة *dar wahbah*

ABBREVIATION

| | |
|-----------------|--|
| CPA 1991 | Child Protection Act 1991(Act 468) |
| CPC | Criminal Procedure Code |
| DVA1994 | Domestic Violence Act 1994(Act 521)1994 |
| G&WPA 1973 | Girls and Women Protection Act 1973 (Act 106) |
| IFL(FT)1984 | Islamic Family Law (Federal Territories) Act 1984 |
| JH | Journal Hukum |
| LR(M&D)A1976 | Law Reform (Marriage and Divorce) 1976(Act 164) |
| MLJ | Malayan Law Journal |
| MWA1975 | Married Woman Act 1957 (Amendment1994) |
| n.a | no author |
| n.d | no date |
| n.pb. | no publisher |
| n.pl. | no place |
| p. | page |
| P.B.U.H / S.A.W | Peace Be Upon Him / <i>salla Allah 'alaihi wa sallam</i> |
| PC | Penal Code |
| r.a | radiya Allah 'anhu / 'anha / 'anhum |
| S.W.T. | subhanahu wa ta'ala. |

CHAPTER 1:

INTRODUCTION TO DOMESTIC VIOLENCE

CHAPTER 1: INTRODUCTION TO DOMESTIC VIOLENCE.

In Malaysia, the majority of the population of this country consisted of Muslim Malays with a large industrial and mining Chinese and Indian community in their midst. Because of the situation we have two legal systems in Malaysia.

Nowadays, domestic violence not only happened to the non-Muslim but it also happened to Muslim family. Eventhough in Malaysia we have two different legal systems namely Islamic Legal System and Civil Legal System, but the domestic violence is considered as criminal offences.

Domestic violence is not just hitting, or fighting, or an occasional mean argument. It is a chronic abuse of power. The abuser tortures and controls the victim by calculated threats, intimidation, and physical violence. Actual physical violence is often the end result of months or years of intimidation and control. The truly meaning of the domestic violence had been interpreted by Malaysian's Domestic Violence Act 1994.

According to the Minister of Woman Development, Datuk Shahrizat Abd Jalil, there were many cases regarding domestic violence. Beside that, the victims in that cases are women. However, is that domestic violence only refer to woman? What about the man or the husband who had injury within the family?. Perhaps a better definition of the domestic violence is emotional abuse, physical abuse, or sexual abuse between people who have at some time had an intimate or family relationship.

1.1 The Problem Statement

Domestic violence can take many form. There is, of course, the use or threat of physical force. The government has now committed itself to a multi-disciplinary, cross-departmental, comprehensive, coherent, and properly funded program for the eradication

of violence from the home.

The issue in this research is to ensure what is the exact solution for the domestic violence and whether there are different solutions in Islamic law. If this case involve the non-Muslim or Muslim as victim, so which way should they take to solve their problem.

The second issue in this research is to compare the both solutions between Islamic law and civil law. The researcher wish to compare and highlight, whether there is any difference between them.

1.2 Research Aim.

The aims of this research are twofold. The first aim is to look at what the exactly solution for domestic violence. The second one is to identify which one way that the victim should get to solve their problem.

Realizing the truth that the victims of domestic violence are exposed to lot of injuries either physically or mentally or damage of property or loss of money. These injuries are inflicted on them and the victims should claim the payment given as a reward.

The researcher's focus is based on the different types of solution in these legal systems and to compare between them. Based on the present situation, many victims do not know their position and what action should be taken. Therefore, the research shall expose the people the way should they take regarding this problem. The purpose of this research is also to sketch the legal remedies available to a person who can prove that he or she has been a victim of violence.

1.3 Definition of Terms

The definition of domestic violence can be found in the Malaysia's Domestic Violence (Act 521) 1994 Amendment 1999.

Domestic violence means the commission of any of the following acts ;

- (a) willfully or knowingly placing, or attempting to place, the victim in fear of physical injury,
- (b) causing physical injury to the victim by such act, which is known or ought to have been known would result in physical injury,
- (c) compelling the victims by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain
- (d) confining or detaining the victim against the victim's will or causing mischief or destruction or damage to property with intent to cause or knowing that it is likely to cause distress or annoyance to the victim, by a person against:-
 - (i) his or her spouse,
 - (ii) his or her former spouse,
 - (iii) a child,
 - (iv) an incapacitated adult, or
 - (v) any other member of the family.

The detail about the definition of terms domestic violence and the concept of domestic violence itself will be discussed in the chapter 3.

1.4 Summary

Generally in a civil proceeding the issue before the court is to get the order from court to ensure the offender returns what he has taken illegally done. Basically the victims claim for the compensation for injury, declaration, habeas corpus, mandamus, certiorari and some other remedies. Nowadays we hear about domestic violence almost everyday and this research will identify the way to curb and solve it and try to compare between the two legal systems.

LITERATURE RIVIEW

Domestic violence is a criminal offences but the solution for this case different between Islamic and civil law. This is due to the fact that it is a result of research that have done by Linda A. McGuire, Esq in her research entitled *Criminal Prosecution of Domestic Violence*. The researcher concluded that the victims can take effective step to solve it.

In the article by Jal Zabdi Bin Mohd Yusoff, "Seksyen 10 Akta Keganasan Rumahtangga 1994 Lwn. Seksyen 426(1) Kanun Prosedur Jenayah" He had found that the act provided for the victim of the domestic violence that they can apply from court to order the offender to pay and amount of compensation. Beside that, according to his opinion, if any allotment in Kanun Prosedur Jenayah are suitable to use by the court in Malaysia, so there are more advantages for the victims especially to save time and cost.¹

Another article is "Family Violence : A Legal Perspective",² This article focuses on lawyer's position in the case of family violence and it also provides educational information to lawyer. The researcher viewed that family violence is a complex problem, so the lawyer should be well informed.

Mimi Kamariah Majid in her book "Criminal Procedure in Malaysia" said that domestic violence is a male disease and the criminal law had only limited relevance and provided little real protection to the battered wife or other victim of domestic violence.

"Domestic violence : An Overview"³ found out the definition for the domestic violence. He wrote that domestic violence is between adult intimate partners. The researcher stated that violence between any of the following: husbands, wives, ex-husband, ex-wives,

¹ Jal Zabdi Bin Mohd Yusoff. n.d. *Jurnal Undang-Undang 2000*. n.pl. JMLC. v. 27. pp. 305-312

² n.a. October 1999. *The Colorado Lawyer*. n.pl. n.pb. Vol. 28. No.10

³ C.J Newton. February 2001. *Mental Health Journal*. n.pl. n.pb. p.1. <http://www.therapistfinder.net> \DomesticViolence.

partners, ex-partners, brothers, sisters, mothers, fathers, children, people who have lived together (which could include cousins, brothers-in-law, sister-in-law, and caregivers), and people who are or have dated in the past are in the category of domestic violence.

METHODOLOGY

Data Sources

To ensure that this research succeeds, the researcher will conduct an interview on the victims who had experienced domestic violence. In other words, the researcher will interview the victims and the respondents who relate to this subject. Beside that the researcher will use secondary data such as statistic from the Ministry of Woman Development and other agencies to ensure and support this analysis while looking at the solution of domestic violence. In addition to increase the number of sources the researcher look at the secondary data such as the books, magazines, reports, and internet.

Research design

Firstly, in order to identify the solution of domestic violence and to compare between Islamic and Civil Law, the researcher will examine the solution provided in the Domestic Violence Act 1994 (Act 521).

This research is a short term, descriptive study, so, in order to get better result interviews will be conducted. The interviews are conducted upon individual respondent and representatives for organization.

On the victims side, questions to be asked are based on whether the decision given by court are relevant and reasonable and they satisfied with the judgement. This survey is to make sure that the victims know their rights in the eyes of the law.

LIMITATION

To make sure that this research runs smoothly, the researcher went to National Library but due to time constraint has no enough time to check for the references thoroughly because Saturdays are alternately public holidays. The researcher also went to other libraries such as International Islamic University Malaysia (IIUM) Library, National University of Malaysia (UKM) library, University of Malaya (UM) and also Pusat Islam Library but they are quite far from a KUIM distance, which gives difficulty to the researcher.

The researcher found the information and sources about the research from the internet which wrote by the intellectual individual and professional also academic person.

CHAPTER 2:
ISLAMIC FAMILY
INSTITUTIONS

CHAPTER 2: ISLAMIC FAMILY INSTITUTIONS

Introduction

A family in Islam is unity in which a man and woman unite to share their life together according to the rules and regulations laid down by Syariah. They become as close to each other as a garment is to the body. A family in the modern world consists of man, a woman, and their children. Marriage between the children's mother and the father is central to the family. It is ceremony which allows a man to live with a woman or for them to legally cohabit for a long time and have children.⁶

According to Lord Penzance in *Hyde v Hyde*⁷ said that, marriage is the voluntary union between a man and a woman for life to the exclusion of all others. The husband's honor becomes an integral part of his wife's honor, and vice versa. They share each other's prosperity and adversity. Thus in Islam the bridal couple are united as husband and wife in the presence of witnesses seeking Allah's blessings to increase in mutual love and compassion and agreeing to care for each other in sickness and adversity. This fundamental principle of Islamic marriage. Understood and observed by the spouses, is the basic of the institution of Muslim marriage.

In the family, the man is charged with the duty of being the leader of the family and a woman is assigned the duty of looking after the household. Even if the men has more responsibility than the women and thereby has a degree over her, it does not make husband inherently better than is wife. The Quran contains a verse which says:

"وَلَا تَتَمَنَّوْا مَا فَضَّلَ اللَّهُ بِهِ بَعْضَكُمْ عَلَى بَعْضٍ لِّلرِّجَالِ نَصِيبٌ مِّمَّا كَتَبُوا وَلِلنِّسَاءِ

⁶ Mimi Kamariah Majid. 1999. *Family Law in Malaysia*. Kuala Lumpur. Malayan Law Journal. p.1

⁷ [1866] LR IP&D 130

نَصِيبٌ مِّمَّا اكْتَسَبْنَ وَاسْأَلُوا اللَّهَ مِنْ فَضْلِهِ إِنَّ اللَّهَ كَانَ بِكُلِّ شَيْءٍ عَلِيمًا"

*"And in no wise covet those things in which Allah has bestowed His gifts more freely on some of you than others: to men is allotted what they earn and to women what they earn"*⁸

Islam has emphasized the importance of marriage and strengthen relation family. Islam also emphasize which marriage significant and the first is thing in *ibadat* (worship). When we refer to our al-Quran discover : -

"يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا"

"Oh mankind! Fear Your Guardian-Lord, who created you from a single person, created, out of it, his mate and from them twain, scattered (like seeds) countless men and women. Fear Allah, through whom you demand mutual (right) and be heedful of the wombs(that bore you): for Allah ever watch over you".⁹

"هُوَ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَجَعَلَ مِنْهَا زَوْجَهَا لِيَسْكُنَ إِلَيْهَا فَلَمَّا تَغَشَّاهَا حَمَلَتْ حَمْلًا خَفِيفًا فَمَرَّتْ بِهِ فَلَمَّا أَثْقَلتْ دَعَوَا اللَّهَ رَبَّهُمَا لَئِنْ آتَيْتَنَا صَالِحًا لَنُكُونَنَّ مِنَ الشَّاكِرِينَ"

*"It is He who created you from a single person, and made his mate of similar nature, that he might live with her (in peace and love), when they are close together, she bears a light burden (and responsibility) and carries it about (well and easy). When she grows heavy, they both pray to Allah their Lord,(saying):if You give us a good child, we promise we shall be grateful"*¹⁰

Allah has created men and women to play distinct roles in human society and woman's biology and physique best suit her, at base, for the material role so necessary in the

⁸ Al-Qur'an. An-Nisa' 4:32. (All Quranic translations in this writing are based on Syed Vickar Ahamed, Prof. n.d. *The Holy of Al-Qur'an, Intrepretation of The Meaning of The Glarious Qur'an*. New Jersey : Holmdel. Translations from other sources will be cited accordingly)

⁹ Al-Qur'an. An-Nisa' 4:1

¹⁰ Al-Qur'an. Al-A'raf 7:189

creation of healthy and happy families. Allah said in Al-Quran:

إِذْ قَالَتِ امْرَأَةُ عِمْرَانَ رَبِّ إِنِّي نَذَرْتُ لَكَ مَا فِي بَطْنِي مُحَرَّرًا فَتَقَبَّلْ مِنِّي إِنَّكَ أَنْتَ السَّمِيعُ الْعَلِيمُ

"Who the wife of Imran said: My Lord I have vowed unto your what is in my womb, surely you are the one who knows and sees. When she gave birth she said: I have given birth to a female child" And Allah knew very well what she had given birth to the male not like the female."¹¹

The Prophet (peace be upon him) strongly advice Muslim man and woman to get married and bring harmonious families into existence. It is actual harmonies families that make a society welkin and strong, free from imbalance and delinquency. Allah has created men and women as company for one another, and so that they can procreated and live in cool, peace and tranquility according to the commandments of Allah and the directions of His Messenger.

"وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ

فِي ذَلِكَ لآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ "

*"And among his sign is this, that He created for you mates from among yourselves, that you may dwell in tranquility with them, and He has put love and merey between your hearts. Undoubtedly is these are signs for these who reflect."*¹²

وَاللَّهُ جَعَلَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُمْ مِنْ أَزْوَاجِكُمْ بَنِينَ وَحَفَدَةً وَرَزَقَكُمْ مِنَ

الطَّيِّبَاتِ أَفَبِالْبَاطِلِ يُؤْمِنُونَ وَنِعْمَتِ اللَّهِ هُمْ يَكْفُرُونَ "

"And Allah has made for you mates (and spouses) of your nature, and made for you out of them sons and daughter and grandchildren, and given to you the best of things to live

¹¹ Al-Qur'an, Al-Imran 3:35

¹² Al-Qur'an, Ar-Rum 30:21

on will they still believe in vain things and be thankful for Allah's favor?"¹³

Marriage is being organized in the Islam for male and female. This is mentioned in the al-Quran which intend to: -

"وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُعْزِمِهِمُ اللَّهُ مِنْ فَضْلِهِ وَاللَّهُ وَاسِعٌ عَلِيمٌ. وَلْيَسْتَعْفِفِ الَّذِينَ لَا يَجِدُونَ نِكَاحًا حَتَّىٰ يُعْزِيَهُمُ اللَّهُ مِنْ فَضْلِهِ وَالَّذِينَ يَبْتِغُونَ الْكِتَابَ مِمَّا مَلَكَتْ أَيْمَانُكُمْ فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا وَآتُوهُمْ مِّنْ مَّالِ اللَّهِ الَّذِي آتَاكُمْ وَلَا تُكْرِهُوا فَتَيَاتِكُمْ عَلَى الْبِغَاءِ إِنْ أَرَدْنَ تَحَصُّنًا لِّتَبْتَغُوا عَرَضَ الْحَيَاةِ الدُّنْيَا وَمَنْ يُكْرِهِنَّ فَإِنَّ اللَّهَ مِنْ بَعْدِ إِكْرَاهِهِنَّ غَفُورٌ رَّحِيمٌ"

"Marry those among you are single or the virtuous ones among your slaves, male and female, if they in poverty Allah will give them ways out of His grace, for Allah understand all, and He knows all things. Let those who do not find the means to marry keep themselves pure, until Allah gives them means out of His grace. And if any of your slaves ask for a note (of promise) in writing, (to enable them to earn their freedom), give them such a note(of promise) if you know any good (ones) from them, yes, give them something from your slaves from the means which Allah has given to you. But do not force your maids to prostitution when they like purity (of their moral conduct) so that you may make a gain in things of this life, but if anyone forces them (the maids) still after such force, Allah is Often Forgiving, Most- Merciful,(to the maids)"¹⁴

Islam considers marriage as one of the most virtuous and approved institutions. The importance of the institution of marriage receives its grates emphasis from the following *hadith* of the Prophet :

"marriage is my sunnah, whosoever keeps away from it is not from us"

¹³ Al-Qur'an, An-Nahl 16:72

¹⁴ Al-Qur'an, An-Nur 24:32 and 33

Objective and Goal of Marriage in Islam

A family is a basic unit in our society. On it lies the strength and stability of society. Each family which built is aimed to create a life pattern more progressive, peaceful and calm, and it is not to generate a bad situation or disputes and also far from burden feelings with situation which do not agreeable. Husband and wife is two functions which responsible to exist a comfortable situation which be illicit louvered , if both these functions can play a role respectively based on method or guidelines family according to *Syariah* guide, absolutely the aim of marriage which to bring happy in the marriage will get be achieved.

Family plays a big role in supporting efforts at maintaining and strengthening the generation and society. When families disintegrate, society's harmony and well-being are jeopardized or put at risk. It therefore should be the concern of everyone to ensure that the family institutions remains relevant, healthy and vibrant. As an marriage institution which the most holy in the human life, there is an objectives, goals and the functions. That is: -

1. To establish or uphold the sovereignty of Islam

Marriage or *Pernikahan* in Islam is a rules has been decided by Allah SWT to the human especially Muslim. Since the family is the nucleus in Islamic society, and marriage is the only way to bring family into existence, the prophet (peace be upon him) insisted upon his followers entering into marriage. Marriage in Islam has aspects of both "*ibadat*" (worship) of Allah and "*muamalah*" (transaction between human being).

In its *ibadat* aspects, marriage is an act pleasing to Allah because it is in accordance with his commandments that husband and wife love each other and help each other to make efforts to continue the human race and rear and nurse their children to become true servants of Allah.

In its *muamalah* aspects, marriage being a lawful response to the basic biological instinct to have sexual intercourse and to procreate children, the *Syariah* has prescribed detailed

rules for translating this response into a living human institutions reinforced by a whole framework of legally enforceable rights and duties, not only of the spouse, but also of their offspring.

2. To enlarge and to tighten a *silaturrahim* (connection)

Marriage is the best method or way to tighten affinity and unity among the human. This matter already cleared by Allah SWT in the verse of Surah Ar- Rum.

3. To protect the self dignity.

The nature of human created by Allah is fixes. For example day and night, black and white, high and low, also beautiful and ugly, male and female and so on. When the couple marry, that is means they always rear and execute duty and responsibility as a husband and wife and also as a parents.

4. To protect paternity (*nasab*) and continue generation.

Family institution can build a human generation. This matter proven since Adam's birth until now.

"وَأْمُرْ أَهْلَكَ بِالصَّلَاةِ وَاصْطَبِرْ عَلَيْهَا لَا نَسْأَلُكَ رِزْقًا نَّحْنُ نَرْزُقُكَ وَالْعَاقِبَةُ لِلتَّقْوَىٰ"

"Enjoin prayer on your people, and be constant in (insisting upon) it, we ask you not to provide livelihood, we provide it for you, but the (gift of) the Hereafter is for righteousness"¹⁵

¹⁵ Al-Qur'an. Taha 20:132

Responsibilities of Husband and Wife

In Islam there is absolutely no difference between men and women as far as their relationship to Allah is concerned, as both are promised the same reward for good conduct and the same punishment for evil conduct. The Quran says:

"وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ"

*"And for women are rights over men similar to those of men over women."*¹⁶

The Quran says that women have souls in exactly the same way as men and will enter Paradise if they do good.

"ادْخُلُوا الْجَنَّةَ أَنْتُمْ وَأَزْوَاجُكُمْ تُحْبَرُونَ"

*"Enter into Paradise, you and your wives with delight....."*¹⁷

The ethical principles of the husband and wife relationship are believe to derive from a conscientious commitment by both sides to the divine designation of marital union as an abode of peace and serenity, a link of mutual love and compassion- all being Allah's sign for those who reflect.

Responsibilities of Husband

The role of the husband normatively evolves around the principle that is his solemn duty to Allah SWT to treat his wife and his family with kindness, honor, and patience, to keep them honorably or free them from marital bond honorably, and cause them nor harm or grief

- 1) A husband is a leader in a family, so he is responsible to make up his family according to guide from Allah and His messenger. As a responsible husband, he must

¹⁶ Al-Qur'an. Al-Baqarah 2: 228

¹⁷ Al-Qur'an. Az-Zukhruf 43:70

solve and settle problems kindly and patiently, neither the problems arise among them or among their neighbor.

- 2) A husband must have to give love and spend time together with his wife and family. A good husband have to guide and foster his wife and his family to the direction of happiness in the world and the next world.
- 3) A husband has the legal right to restrict his wife's freedom of moveable. He may prevent her from leaving her house without his permission unless there is a necessity or legitimate reason for her to do otherwise.
- 4) The wife's maintenance entails her incontestable right to lodging, clothing, food and general care. Thus, a husband should prepared all of these thing to his wife. The wife has the right to have clothed, fed, and cared for by her husband, in accordance with his means and her style of life. This right is to be exercised without extravagance or miserliness. For instance, if the wife has been used to having a maid or if she is unable to attend to her domestic affairs, it is the husband's duty to provide her with at least one maid if he can afford it.
- 5) The wife's right to maintenance is only one aspect of her marital role. There are several other aspect to be considered. She is entitled to a marriage gift, or dower (*mahr*) that is her own. This may be prompt, deferred, or divided, depending on the agreement of the parties involved. The prompt portion is payable before or upon the consummation of the marriage.

Responsibilities of wife.

The main obligation, duties or the responsibilities of the wife as a partner in a marital relationship is to contribute to the success and blissfulness of the marriage as much as possible. She must be attentive to the comfort and well being of her mate. She may neither offend him nor hurt his feelings.

- 1) The wife has many responsibilities and varied. But the question of her obedience to the husband has probably stimulated more comments than any other single problem. She must obey her husband and refrain from dissent, because the Quran states that men are guardians and protectors of women. Al-Quran said:

"الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ
فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَاللَّاتِي تَحَافُونَ نَشُورَاتٌ لِّمَا فَعَطُوهُنَّ
وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاصْرَبُوهُنَّ فَإِنِ اطَّعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلاً إِنَّ اللَّهَ كَانَ عَلِيًّا
كَبِيرًا"

"Men are the protectors and maintainers of women because Allah has given the one more (strength) than the other and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part you fear disloyalty and ill-conduct, caution (and warn) them (against the specific faults, first), refuse to share their beds (next), beat them (lightly, at the very last) but if they return to obedience, seeks not against them means (of angering them) for Allah is Most-High, Great (above all of you)".¹⁸

For instance, she may not enter into a voluntary fast without his permission, because her observance may interfere with her marital performance and thus infringe upon his rights. But when it comes to the obligatory fasting in the month of *Ramadhan*, she does not need his permission because that is her obligation to Allah SWT, and, in a sense, to herself.

- 2) A wife must neither receive male stranger nor accept gifts from them without her husband's approval.

¹⁸ Al-Qur'an. An-Nisa' 4:34

- 3) A refractory wife has no legal right to object to her husband exercising his disciplinary authority. Islamic law, in common with most other systems of law, recognizes the husband's right to discipline his wife for disobedience.¹⁹
- 4) The wife must be faithful, trustworthy, and honest. More specifically, she must not deceive her mate by deliberately avoiding conception, lest it deprive him of legitimate progeny. Nor must she allow any other person to have access to that which is exclusively the husband's right.

The responsibilities of Husband and Wife together.

The duty of Husband and wife as a parents, therefore, is to give their daughters training from an early age to be prepared for marriage and childbirth. Islam has thus made women an honored partner of men in raising a family. A chaste and virtuous woman is a blessing to her household, and makes her children virtuous in the way of Allah. Muslim women correctly appreciate this role laid down by Allah and His Messenger and take pride in fulfilling it.²⁰

¹⁹ *Abd-al-'Ati, Hammudah. 1977. *The Family Structure in Islam*. Indianapolis. American Trust Publicates. pp. 172-173

²⁰ *Abdur Rahman I. Doi. 1992. *Women in Shariah (Islamic Law)*. Kuala Lumpur. A.S Noordeen. pp. 1-3

CHAPTER 3:

DEFINITION OF “DOMESTIC VIOLENCE” TERMS

BAB 3: DEFINITION OF “DOMESTIC VIOLENCE” TERMS

Introduction

There seems to have been an increase in domestic violence cases in recent years although it may be that such cases were not reported in the past. There were criminal law remedies but recently a new law of the Domestic Violence Act 1994, has been enacted to provide for legal protection in situations of domestic violence. In this chapter we will discuss about the exact definition of the terms domestic violence, who is actually entitled in this case, and is it only women or whether men can also be the victim?

3.1 Definition of terms

1. Domestic violence means the commission of any of the following acts:²¹
 - (a) willfully or knowingly placing, or attempting to place, the victim in fear of physical injury;
 - (b) causing physical injury to the victim by such act, which is known or ought to have been known would result in physical injury;
 - (c) compelling the victims by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain;
 - (d) confining or detaining the victim against the victim’s will; or
 - (e) causing mischief or destruction or damage to property with intent to cause or knowing that it is likely to cause distress or annoyance to the victim, by a person against
 - (i) his or her spouse;
 - (ii) his or her former spouse;
 - (iii) a child;

²¹Section 2 Domestic Violence Act 1994 (Act 521) and Regulations

- (iv) an incapacitated adult; or any other member of the family

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2) Domestic violence is cruelty or a member in a family does an abuse that contradicts with the law and it to another member in the family. It can be done in the form of physical injury, mental injury, sexual injury, and neglecting of responsibilities. In Islam domestic violence more describe as *nusyuz* or careless of responsibilities without any unlawful reasons which solemnize by the Hukum Syara'.²²

3) The view of the scholars is that the domestic violence is cruelty done by a member of a family in a house to another member of the family.²³

4) Walter gives the meaning of domestic violence as violence in a form of any action and it becomes harmful and injurious either physically or by technical that cause trouble to mental and emotional to the victim of domestic violence.²⁴

5) *Fuqaha'* interpreted the domestic violence as violence against person which can give injury or assault somebody and it can bring death. This includes battery on a person or harshness and to be more specific is ill-treat somebody.²⁵

Therefore we can assume or conclude that the domestic violence happen or can be done in any causes and in any way either abusing children, husband, wife, or other members in the family which had been determined by Section 2 of the Domestic

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²²Rosmawati Bt Mohamed Nazir. n.d. *Keganasan Rumahtangga dan Penyelesaian; kajian kes di Jabatan Agama Islam Wilayah Persekutuan (JAWI) Kuala Lumpur*. Jabatan Fiqh dan Usul Pengajian Syariah Akedemi Pengajian Islam Universiti Malaya. p. 2

²³Mahrum Siraj (Profesor Madya). n.d. *Keganasan Rumahtangga-Perlindungan Undang-Undang*. n.pl. n.pb. p.1

²⁴Freeman MDA. 1979. *Violence in Family*. England. Sayon House. p. 1

²⁵Abd. Kadir Audah. 1987. *At-Tasyri' Al-Jinai' al-Islami*. Damsyik. Beirut Darul Rashid. v.2 p. 204

Violence Act 1994. Assault, battery, harshness, cruelty, and neglecting of responsibility the spouse or parent are also in the ill-treating category.

In Islam if somebody is irresponsible to his or her duty, it is called "nusyuz". Either the husband or the wife can do it.

Concept of Domestic Violence from Islamic Perspective.

Islam means safe and peace. It brought human to the good environment either to individual or society or country or to the nation. Thus Islam hates and refuses the violence against family, nation and country.

Al-Quran prohibits violence and damage. We can see from the word "لا تظلموا" which means do not do a violence and the word "لا تفسدوا" which means do not do a harm. These two words come in "فعل الأمر" (instruction verb), which means it is compulsory to do or to leave it. There are 238 verses in Al-Quran, which prohibit Muslim to do violence including violence among the family.²⁶

Before the sixth century, women at that time were pressured and oppressed by men. They regarded woman as troubles. This is because the society did not accept women during that time. If a family rears a daughter, they will kill the daughter or they will hide them underground. Women not can do what they should do exactly. They have no right in the society. Women was classified as a second level group and regarded lower in the society. This is mentioned in the Al-Quran:

"قُلْ تَعَالَوْا أَتْلُ مَا حَرَّمَ رَبِّيَ عَلَيْهِمْ إِلَّا تُشْرِكُوا بِهِ شَيْئًا وَبِالْوَالِدَيْنِ إِحْسَانًا وَلَا تَقْتُلُوا

²⁶Dr. Muhd Hassan Al-Hamsi, n.d. *Al-Quran tafsir Wa Bayan Ma' Asbab An-Nuzul Lis Al-Faz*. Damsyik. Beirut Darul Rashid, pp. 140-142

أَوْلَادِكُمْ مِّنْ إِمْلَاقٍ نَّحْنُ نَرْزُقُكُمْ وَإِيَّاهُمْ وَلَا تَقْرُبُوا الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَّنَ وَلَا
تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ ذَلِكُمْ وَصَّاكُمْ بِهِ لَعَلَّكُمْ تَعْتَلُونَ "

"Come, I will say (again) what Allah has (really) forbidden you from, do not join anything as equal with Him, be good to your parents, do not kill your children on an excuse of want, we provide sustenance for you and for them. Do not come near to shameful deeds, whether openly or in secret, do not take life, which Allah has made sacred, except by way of justice and law, thus does He command you that you may learn wisdom".²⁷

Indeed Islam really condemns cruelty done by parents during the period of Jahilliyah. They killed the daughters. As we know that Islam emphasizes and guarantee the role of women as wives. A husband not can make his wife as a slave or "*khadam*". A wife should stay in her husband's house as a manager to their marriage and as a teacher to their children.²⁸

Therefore, if her husband makes a wife as a slave, we can assume that as a domestic violence. According to the majority of jurist (*ulama'*) a man who had done the violence against his wife should take *qisas*. This is referred to the story during *Rasulullah's* period. A man name *Saad Bin Al-Rabi'* had slapped his wife, *Habibah Binti Zaid* because he said that she has committed *musyuz*. *Habibah* and her father went to meet *Rasulullah* to complaint. Her father said to *Rasulullah* "I gave the permission to *Saad* to marry my daughter and then, suddenly he slapped her". After heard the story *Rasulullah* said to them "you should take *qisas* to your husband". When *Habibah* and her father went back to their house, *Jibril* came to see *Rasulullah* and revealed the verse 34 of Surah an-Nisa'.

²⁷ Al-Quran. Al-An'am 5:151

²⁸ Andek Masnah Andek Kelawa. 1999. *Kepimpinan Wanita dalam Syariah*. Bangi. Universiti Kebangsaan Malaysia. p. 19

So, it is clear that a husband cannot beat or kick or ill-treat his wife as long as she obeys him and Allah's order. If she commits *nusyuz* to wards him, he can beat her but it is the last choice to the husband. However a husband cannot beat until it becomes injurious. It is just to give a warn and to teach her, and not to harm her.

"يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرِهًا وَلَا تَعْضُلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا آتَيْتُمُوهُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُّبِينَةٍ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا"

"O you who believe! You are forbidden to inherit women against their will nor should you treat them with harshness, that you may take away part of dowry you have given to them, except where they have been guilty of open lustfulness, on the contrary live with them on a basis of kindness and justice, if you take dislike a thing, and Allah brings about through it a great deal of good".²⁹

According to the above verse it is stated that a husband cannot do violence against his wife.

Concept of Domestic Violence from Legal Perspective.

Domestic violence can take many forms. There is, of course, the use or threat of physical force but (as the Law Commission pointed out) the law is properly concerned with other forms physical, sexual or psychological molestation or harassment such as persistent pestering and intimidation, shouting, denigration, threats, or argument, nuisance telephone calls, damaging property, following the applicant about and repeating calling at her home or place of work and even filling car locks with superglue. The definition of domestic violence itself used in section 2 DVA 1994.

²⁹ Al-Qur'an. An-Nisa' 4:19

In Malaysia have the legal remedies available to a person who can prove that she or he has been a victim of domestic violence. Of course, domestic violence will often involve the commission of a criminal offence and civil offence. And it is now well settled that marriage does not constitute a license to assault a spouse against his or her will.

Generally there are more provisions in legal system in Malaysia regarding to violence against wife done by husband or violence against husband done by wife. For example in Penal Code, there are two types of offences that seizable offence and non-seizable offence. It means that not all offenders in domestic violence can be arrested. The victims of domestic violence can apply the legal protection from the court to protect her or his self.