

# Advocacy Wife Becomes Victim of Domestic Violence (Between the Indonesian Criminal Law and Islamic Law)

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## Abstract

Concepts advocacy of domestic violence victims are basically set in the Indonesian criminal law khususnya *Act No. 23 of 2004 on the Elimination of Domestic Violence stairs*. Yet the methods and goals of advocacy for victims of domestic violence in the application in court remains to be investigated. Similarly, the judge imposed criminal sanctions for domestic violence defendants. In this research will be carried out comparative studies with Islamic law, both the victim advocacy, criminal sanctions for perpetrators and victims advocacy goals of domestic violence so as to know the differences and similarities in specific.

**Keywords:** advocacy of victims of domestic violence, the Indonesian criminal law, Islamic law.

## 1.Introduction

Wives who experienced domestic violence from her husband has become very alarming phenomenon, which was widely reported in various print and electronic media in Indonesia. Victims of domestic violence have a less legal protection, even still strong presumption that domestic violence is a private matter, so the fate of wives who are victims of violence from her husband own the dilemma. On the one hand the wife suffered pain caused violence by her husband, but when her husband reported to the police, then the police do not receive the report on the grounds that violence against wives is married affairs (civil) and not a criminal matter.

In addition, the completion of the criminal case in Indonesia, often pay more attention to the legal rights of the accused than the rights of victims, so many crime victims who lack legal protection reasonable. Positioned more crime victims as witnesses, so little chance to fight for their rights. With the enactment of *Law No. 23 of 2004 on the Elimination of Domestic Violence* expected criminal legal advocacy for victims of Indonesia would be more obvious and serious attention of law enforcement officials. Because in addition to the victim's wife, also a witness having knowledge of an act of domestic violence she suffered, as well as a victim of legal subjects domiciled equal before the law. Consistent with the method that needs to be analyzed advocacy, criminal sanctions and criminal legal advocacy objectives Indonesia for victims of domestic violence are regulated in *Law No. 23 of 2004*.

Since the majority of the perpetrators and victims of domestic violence is the population of Indonesia is Muslim, so need to be analyzed on a method of advocacy, criminal sanctions and advocacy goals against domestic violence victims under Islamic law. Because Islamic law is not just adjust the vertical relationship of a servant to God (worship), but also provides for the rule of law (relation fellow human beings) that according to Snouck Hurgronje, that "Islam is a religion of law in the full meaning of the word (Islam is a religion the legal sense of the word)."

In this regard, the authors were interested in analyzing systems advocacy against wives who are victims of domestic violence are regulated in *Law No. 23 of 2004 and Law of Islam*. Due to the initial research and there is no specific standard concept in Islamic law on advocacy against wives who are victims of domestic violence. Through the analysis of the paper will be obtained differences and similarities methods, criminal sanctions and criminal legal advocacy objectives Indonesia and laws against wife who are victims of domestic violence.

Departing from the above description, the problem in this paper are (1) how the method of advocacy, criminal sanctions and criminal legal advocacy purposes Indonesian and Islamic law for his wife who are victims of domestic violence, (2) how the differences and similarities advocacy methods, criminal sanctions and advocacy purposes Indonesian criminal law and Islamic law on wives who are victims of domestic violence.

## 2.Method Victim Advocacy Domestic Violence LegalIndonesia and Islamic Criminal Law

### 2.1 Difference method Victim Advocacy

Advocacy victims of domestic violence according to Indonesian criminal law in this paper refers to *the Law No. 23 Year 2004 on the Elimination of Domestic Violence* (hereinafter use the term *Act No. 23 of 2004*). Advocacy victims of domestic violence under this law used three methods, namely (1) preventive methods, direct protection to wives who are victims of violence from her husband through temporary protection and the protection of the court, (2) the method by the repressive apparatus authorities (police, prosecutors and judges) against the perpetrator (husband), and (3) methods of rehabilitation through restoration of physical health, and psychological casualties after experiencing domestic violence from her husband. Rehabilitation method is also

done to the perpetrators of domestic violence, in order to become a good member of the community and can foster family well anyway. *Act No. 23 of 2004* also signaled the need for an educational method that a wife is not experiencing domestic violence from her husband .

While Islamic law in advocating against wives who are victims of domestic violence, with three methods ie methods of educational, preventive and repressive methods / curative. Educational methods, aiming for the wife to avoid violence in the household of her husband, it has been suggested that Islamic law a woman choosing a husband *keberagamaannya* discretion, not because of physical considerations handsome, rich, or noble descent. Because it will lead *keberagamaannya* husband as her husband always obey their obligations as a form of obedience to God's responsibility. By itself the husband will give her rights as a worship to God anyway, otherwise the husband would not have the heart to commit domestic violence to his wife.

However, in the common life of an abused wife in the household of her husband. In such cases the use of Islamic law through the mediation of preventive methods *hakamain institutions*, and the protection of the court. This *hakamain* institutions contextually role to protect his wife from violent husbands during the conflict.

Preventive method is through the courts, husbands who commit violence economics, Islamic law using two alternatives, namely granting a dispensation to take the wife of a living husband's property without his knowledge, if the husband is stingy. But if the wife can not take myself, husband and reluctant to give maintenance to the wife while the husband is able feasible, then the authority of the judiciary that would call her husband. The first step was given a reprimand husband to provide maintenance to his wife, but if the husband still defied the authority to compel the court to carry out the obligations of the husband to his wife. Even the courts authorized to take from the estate of a living husband to meet his wife (the victim). This is in line with the state's goals by Charles E. Merriam, to provide welfare which includes security, order, justice, and freedom to its citizens.

Through preventive methods anyway, wives who experienced psychological violence in the form of defamation (accused of adultery by her husband without proof) the right to self-defense in accordance with QS. al-Nur: 6-9. Similarly, wives who experienced sexual violence and the right to defend themselves freed from the punishment of adultery. Repressive methods (punishment) on the contents to provide security and justice to the victim (wife) and communities, and on the other hand is a curative method (improved behavior perpetrators of domestic violence).

So, according to Islamic law advocacy against wives who are victims of domestic violence from her husband, carried out by the court, so that victims get legal protection without violating human rights and human rights husband wife could obtain legal protection.

From the above discussion suggests that advocacy against wives who are victims of domestic violence according to Indonesian criminal law (*Law No. 23 of 2004*) in contrast to Islamic law, Islamic law is not curative method specifically to the wife (the victim) post experiencing domestic violence from her husband, as used in the *Act No. 23 of 2004*. Because after victim advocacy experience domestic violence has been fused with protection through repressive methods. Therefore advocacy against wives who are victims of domestic violence need to be done through the curative medical and psychological rehabilitation (spiritual). Curative measures are not only physical and mental health recovery medically, but also empowering the victim to protect herself from violence after experiencing domestic violence, as well as spiritual guidance through religious lecture or spiritual guidance.

Another difference, is advocating against wives who are victims of domestic violence are instructive (before wife experiencing violence from their husbands) are not specifically regulated in *Law No. 23 of 2004*, but it is governed by Islamic law.

Thus, the method advocates of domestic violence victims under Islamic law include constructive efforts long before an act of domestic violence occurred and override a wife. This is consistent with the view of Islamic law, that marriage is a means to achieve marital happiness, good life in this world and in the hereafter. While the methods of advocacy domestic violence victims under the *Act No. 23 of 2004* covering health recovery of victims, both physically, psychologically, as well as faith and piety (curative methods).

## **2.2 Equation method Advocacy Domestic Violence Victims**

Victims' rights that must be protected in accordance with Islamic law, according to Abdul Qadir Ouda, actually have in common with the state law (*al-al-wad'iyah qawānūn*) at the present time. It's just that the difference lies in the formulation of the laws of each country that is tailored to the benefit of society. So, the equation of the advocacy method wives who are victims of domestic violence according to Indonesian criminal law (*LawNo. 23 of 2004*) and Islamic law, is (1) a preventive method or direct protection to the victim (wife) by law enforcement officers , either through temporary protection, or the protection of the court, and (2) to the repressive methods the perpetrator (husband). To maximize the advocacy of victims of domestic violence, both Indonesian criminal law (*LawNo. 23 of 2004*), as well as Islamic law using repressive methods implemented by the judiciary, so that the victim can obtain security and justice. Punishment meted out to the perpetrators by itself

will prevent victims and educate the offender to commit tida domestic violence in later life.

### **3.Criminal sanctions Perpetrators Victims of Domestic Violence**

#### **3.1 Criminal Sanctions difference to Actors**

Criminal sanctions for perpetrators of domestic violence according to Indonesian criminal law (*Law No. 23 of 2004*), is the principal form of punishment of imprisonment or a fine, which is regulated in article 44 s / d 49 as well as additional punishment provided for in Article 50 legislation these laws. The additional criminal, such as restriction of movement actors, to keep the perpetrator from the victim and within a certain time, and the limitation of certain rights of the offender, and the offender determination counseling program under an agency-specific supervisors.

According to *Law No. 23 of 2004*, the husband is proven legally and convincingly commit criminal acts of physical violence to his wife, will be subject to criminal sanctions penjara maximum of five years or a maximum fine of Rp. 15,000,000 (fifteen million dollars). If physical violence is caused casualties illness / serious injury, the offender is punishable by a maximum imprisonment (ten) years or a maximum fine of Rp. 30,000,000.00 (thirty million dollars) in accordance with article 44 of this law. If the victim dies, the offender a maximum imprisonment of 15 years or a maximum fine of Rp. 45,000,000.00 (forty five million dollars) in accordance with article 45 of this law.

So, imprisonment or fines imposed on husbands who commit physical violence to wives varies greatly depending on the impact or physical suffering experienced by the wife (the victim). Imprisonment or fines stipulated in *Law No. 23 of 2004* specify the minimum and maximum limits, as well as hakimlah authority to determine the severity of the punishment to the perpetrators of physical perpetrators of domestic violence. But the judge is not authorized to impose penalties above the maximum limit, or under the minimum limit.

Husbands who commit acts of sexual violence were threatened with punishment in accordance with Article 46 s / d 48 of *Law No. 23 of 2004*, ie a maximum of 12 years imprisonment or a maximum fine of Rp. 36,000,000.00 (thirty six million rupiah) (Article 46), or a maximum of 15 years imprisonment or a fine of at least Rp. 12,000,000, a maximum of Rp. 300,000,000 (Article 47). Meanwhile, according to Article 48 of the perpetrator is punishable by imprisonment of at least 5 (five) years, and the imprisonment of a maximum of 20 (twenty) years, or a minimum fine of Rp. 25,000,000.00 (twenty five million rupiah) and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).

Thus imprisonment or fines imposed on husbands who commit acts of sexual violence to his wife varies greatly depending on the suffering wife (victim) due to the sexual assault. In this case the maximum penalty ranging from 5 years to 20 years in prison or a maximum fine of between Rp. To \$ 12,000,000.00. 500,000,000.00. Imprisonment or a fine to be imposed should the judge refers to the minimum to the maximum extent provided for in *Law No. 23 of 2004*.

While the penalty for husbands who abuse or neglect of the household economy is a maximum of 3 years imprisonment or a maximum fine of Rp. 15,000,000.00 as provided for in Article 49, if the husbands neglect others within the household as referred to in Article 9, paragraph (1), Article 9, paragraph (2).

But in Ambon District Court judge's decision, the punishment meted out to the accused of domestic violence is generally a relatively mild imprisonment, without criminal penalties. It can be analyzed from five Ambon District Court judge's ruling, the punishment meted out to suspects include: two months in prison as in the case of physical violence Rahmansyah Chaidir. Similarly, four-month prison sentence imposed on Bakri Umasugi because doing household negligence. Four-month jail sentence handed down to Ongen well as physical violence to his wife (Stefany John), as well as criminal against Ais four months in prison for committing physical kekerasan to his wife (ONA). Ronal G. Lilipali punishable of six months in prison for committing psychological violence to his wife (Marvietha C. Soplely).

Meanwhile, according to Islamic law, criminal sanctions against perpetrators who commit violent husband in the household to his wife, adjusted to the shape and the violence that is experienced by the victim or the result. Husbands who commit physical violence may be subject to sanctions *QISAS* (capital punishment) if the victim (wife) his death, as did Sukemi, trample his young wife (Siti Fatimah) pregnant young to death. According to Islamic law, the husband could be subject to disciplinary penalties for committing a crime of physical violence causing injuries wife, or injury.

Husbands who commit sexual assault can be sentenced *finger? Mahta'zi? r* the form of sanctions based on the consideration of the judge with respect to the effects of the violence that is. *finger? mah ta'zi? r* is related to the sexual assault to her husband, both forced doing anal sex, or force her to have sex while the wife menstruation, or childbirth. Similarly the husband who sold his wife into prostitution for the benefit of the husband threatened *fingers? Mahta'zi? r*. Due to the action even though it causes her husband to be the victim (dizinai by another man), but the husband and wife's role as perpetrator of coercion into prostitution and not as a rapist, so the husband's actions can be categorized as one *finger? mah ta'zi? r* derived from the *finger? mah had*

that did not meet the elements of *a finger? mah had* adultery, or *fingers? mah ta'zi? r* relating to crime against honor.

Whereas for forcing sexual intercourse during the day of Ramadan, so sanction *kifarat husband*, the freed slaves, if not able, should fast two consecutive months or if not able too, obliged to feed 60 poor people. The husband who did psychological violence (making false accusations of adultery wife) threatened *jarimah qazaf*, whipped 80 times. While the husband to his wife of economic violence, blow penalized or imprisoned in the opinion of Imam Malik.

From the above it can be argued, that all criminal sanctions for perpetrators of domestic violence according to Indonesian criminal law set forth in *Law No. 23 of 2004* is relative (has a minimum and maximum), and the light weight of the punishment depends on consideration of the judge. Meanwhile, according to Islamic law, criminal sanctions for perpetrators of domestic violence adapted to form victims of violence and their consequences. In this case the shape and weight penalties for perpetrators of physical and sexual violence are permanent (not a relative) but the victims or families of victims of physical violence are entitled to forgive principal offender sentence. But victims of sexual violence are not entitled to forgive the offender punishment. Similarly, victims of psychological violence (adultery accusations without proof) permanent punishment without the right to forgive the perpetrators. This is different to the economic violence victims are entitled to forgive the perpetrator punishment. So the judge assigned to check to prove the guilt of the suspect physical, sexual and psychological domestic. If proven guilty, then the punishment is fixed while the sentence in relative economic violence (*jarimah ta'zir*), so hakimlah the authority to determine the shape and weight of his *sentence*.

Based on the above analysis it can be seen, that the criminal sanctions against perpetrators of domestic violence according to Indonesian criminal law set forth in *Law No. 23 of 2004*, only two types of legal custody or a fine. Prison sentences can be seen as a right of Allah (public) since the jailing perpetrators of violence, then the opportunity for domestic violence has been limited and hindered, either temporarily or for ever, so as to provide a sense of security not only to the victim (wife and / or children) but also the surrounding community. At the time of perpetrators of domestic violence, people are feeling the negative effects.

Thus equation criminal sanction domestic violence in order to protect victims of violence (wife) according to Islamic law, and *Law No. 23 of 2004*, is equally protect the private interests of victims and the public interest (public at large), through sanctions of imprisonment (*ta'zi?r*) and fines (*diyat*). But the penalties for criminal domestic violence according to Islamic law is different from criminal sanctions for perpetrators of domestic violence under the *Act No. 23 of 2004*.

### **3.2 Sanctions equation for Actors**

Based on these descriptions, it is known equation sanction perpetrators of domestic violence according to Islamic law, and *Law No. 23 of 2004*, is identical with imprisonment *jarimah ta'zi? R* in Islamic criminal law. In addition to the criminal penalties in the *Act No. 23 of 2004* is identical with *jarimah diyat* in Islamic criminal law.

Punishment is closely related to the violation of the rights of God and rights *Adami*. A right is a right of Allah over the special rights or the rights of Allah for Allah is more dominant, and a right as the right of the right *Adami* if special rights or rights of slave servants more predominant. Allah's rights relating to *jarimah* (offense or offenses) against acts concerning public welfare and tranquility of being *Adami* rights arising from *jarimah* (offense) concerning the interests and rights of the individual.

*Act No. 23 of 2004* in the context of a criminal law that protects the rights (interests) of the public, so that the perpetrators legally and convincingly proven to have committed a criminal act of domestic violence was sentenced to two kinds of law, the imprisonment and punishment fines. Thus if it is associated with Islamic law, a prison sentence is identical to the rights of Allah (public rights) while the penalty is a fine of victims' rights (rights *Adami*). Although domestic violence complaint offense classified in accordance with Article 19 of *Law No. 23 of 2004*, that "the police must immediately investigate after knowing or receiving a report about the occurrence of domestic violence," but the law is to protect not only the interests of individual victim but also the public interest.

In addition to the provision of criminal sanctions against perpetrators of domestic violence should refer to the provisions of *Law No. 23 of 2004*. Because an action can only be convicted if the action is set in the criminal law and is classified as a criminal offense. In Islamic law too. It is closely related to the principles of Islamic law, that "*Hejarimah uqubah wa bi la nash fi al-Shari'ah al-Islamiyya* (there is no crime and no punishment without prior passage in Islamic Law').

## **4. The purpose Advocacy Domestic Violence Victims**

### **4.1 Victim Advocacy goal difference**

Advocacy objectives victims of domestic violence according to Indonesian criminal law in the text refer to Act No. 23 of 2004 on the Elimination of Domestic Violence. According to Baharuddin Lopa (1935-2001

AD), that there are two crime prevention efforts, the *marginal deterrence*, and *prevention of crime*. *Marginal deterrence*, is a stage when the crime prevention efforts has been minimal at this stage because of declining crime rates as a result of more effective prevention and public awareness itself. While the *prevention of crime* (crime prevention) as conventional measures, is that crime prevention weighting approach focused on punishment.

On *marginal deterrence* efforts, reduced crime, not because of the severity of punishment and other repressive measures, but the efforts done is a rational approach, persuasive and other awareness process. As a result, community members do not commit crimes, not because of fear of punishment, but rather on his own consciousness. People are realizing, that means disturbing crimes (torturers) other people and in terms of religion and conscience is not commendable.

Relevant to crime prevention through efforts such *marginaldeterrence*, ideally husband did not commit a crime of domestic violence not because of fear to his wife were sentenced to prison, but more due to personal awareness, that the husband is required by the state to treat her humanely. Husband should be aware, that the wife will feel both physically and psychologically sick if exposed to violence from her husband.

However, prevention of domestic violence through the persuasive efforts and public awareness (husband) to the Indonesian culture is still experiencing problems because many members of the community who live below the poverty line, which is the source of the cause of domestic violence husband to his wife. Poverty can lead to the husband under stress, frustration so prone to commit domestic violence to the wife.

Similarly, a husband and wife legal awareness in general is still low. Husband still see violence perpetrated an act of the husband to the wife for the husband's reasonable in relation to the wife. Wife also generally reluctant to report their husbands to violence to himself, because it is still considered domestic violence is a domestic affair, so suamipun keep doing violence to his wife. In fact, many victims of domestic violence who plucked his report, so it is not investigated by the police, such as data on Ambon Island Police & Lease Island Island, from 52 cases received, 30 cases withdrawn by the victim. Most cases were dropped because the victim (wife) had come to terms with the perpetrator (husband).

Diverging from the analysis it can be argued, that the need to develop a culture grown ashamed. With the culture of shame, someone will bring two forms of the situation, namely 1) shame cause stigmatization, and 2) generating a sense of shame that stigmatized tend to occur in the lives of the people who uphold moral ethics in relation to crime prevention. Culture of shame for the husband, which was embarrassed to violence to his wife. Acts of violence committed by husbands should be understood as a form of failure of the husband to realize happiness in domestic life. Because marital happiness is impossible in relation violent husbands against wives.

Awareness of the law can be realized through the enforcement of the provisions of *Law No. 23 of 2004* because the law has regulated some victim protection provisions that lead to the creation of awareness of the law, especially for the victim. In some passages of the law governing the victim assistance efforts, so that victims understand their legal rights, as well as spiritual guidance to foster religious understanding as well. Instead husband will undergo a process of legal awareness after serving his sentence in detention and correctional facilities. Punishment meted out to her husband, not to torture but rather aims to raise awareness, to deter crime of domestic violence to his wife in the future, as well as respect the rights of his wife.

Consistent with the description by Sholehuddin, that the crime prevention process should combine the two types of sanctions, the criminal sanctions, and the sanctions measures. Criminal sanctions emphasizes the element of vengeance, he is suffering deliberately imposed on violators. While the sanctions measures stem from the basic idea of public protection and mental development of the perpetrators. Strictly speaking, that the criminal sanction physical punishment to the guilty party in order to make him aware, and do not commit crime again. While the sanctions measures aimed at protecting the public with the assumption, that the suffering imposed on the convicted person is expected to give power to the people to avoid the prevention of crime, and mental or spiritual guidance (*treatment*) and the convicted person may reinforce their determination to keep away evil conscience.

Thus the advocacy goals of domestic violence victims according to *Law No. 23 of 2004*, is to uphold justice and order and peace (to protect victims and communities). Because the provision of special protection for victims set out in this law is essentially a *lex specialist* in an effort to realize justice and safety for victims of domestic violence, which is not stipulated in *the Criminal Procedure Law (Penal Code)* and *the Book of the Law Code of Criminal Procedure (CCP)*.

Justice, security and public order will also be felt if the protection of victims of domestic violence made seriously. Similarly chances of repeat offender will be deterred crime of domestic violence, at least as long as the victim is under the protection of the law, either during the period of temporary protection, as well as past court protection. Perpetrators also prevented a crime of domestic violence to the victim, as long as the perpetrator is in custody period, and serving a prison sentence or period. Furthermore, pelakupun expected to gain awareness of the law, so back to being a good member of society, as well as a responsible husband and wife

treated well.

Advocacy objectives victims of domestic violence according to Islamic law is closely related to the global objectives of Islamic law, or *maqāsid al-shari'*? 'Ah. *Sid* the core of *al-sharmaqāl'*? 'Ah, is a public good in the world and the hereafter. This is in line with the opinion of al-Syatibi (720-790 H), that the laws prescribed by God to realize the benefit of mankind, both in this world and in the Hereafter, that is realized and preservation of the five basic needs (*daruriyat*) in the maintenance of human life religion (*hifz al-din*), soul (*al-nafs hifz*), descent or honor (*al-nasl hifz*), treasure (*hifz al-mal*) and sense (*hifz al-'aql*). Benefit of the objectives of the law there are three levels, namely (1) *daruriyah* (primary), (2) *hajiyyah* (secondary), and *tahsiniyyah* (tertiary). *Daruri* called? Because the benefit will not be realized if the first level is not met.

According to Khalaf Abdul Wahhab (d. 1955 AD), that the provisions are *Daruri* are legal provisions that can maintain human life by protecting and maintaining their benefit. If these norms are not met, they would be faced with *mafsadah* (danger) and difficulty. *Daruriyyah* provisions that generally lead to the maintenance of the five main things (religion, life, lineage, wealth and intellect). While the provisions of law which *hajiyyah* is to provide opportunities for *mukallaf* to obtain easiness when having trouble realizing *daruriyyah* provisions. While *tahsiniyyah* provisions are various provisions which require the provision *daruriyyah mukallaf* to run in the best way.

In line with the principal objectives of sharia (*daruriyyah*) *jinaayat* the concept that covers all aspects of *evil nahyi ma'ruf amr* directed in an effort to maintain all the damage. *Jinayat* essentially prescribed to nourish the soul through *jarimah qisas* and *diyat*, *jarimah had* for wine drinkers are used to maintain reasonable, and *jarimah had* against adulterers to the breeding. In this context husbands who commit violence in the household to his wife, if the wife threatening (physical violence), then the husband needs *jarimah* sentenced to *qisas* or *diyat*, or if the husband *ta'zir jarimah* psiikis violence, sexual and economic to his wife.

Under that provision also required to be obedient wife to her husband, the husband may not take property without his knowledge. The wife must also guard her honor. But according to the provisions *hajiyyat*, wife will have difficulty if the husband does not give a living to be appropriate. Otherwise the wife will have difficulty if they have to be punished if taking income from the estate of her husband without his knowledge, or if convicted of *adultery had* forced into prostitution by her husband or forced to perform anal sex by her husband. Consistent with the provisions *hajiyyat*, the wife should be freed from the threat of punishment. Because of her condition showed he was in trouble, that if he refused it would be fatal.

Criminal sanction in Islam has several objectives, namely 1) deterrent to perpetrators not to repeat his crime, 2) social education, which means that members of the public are educated to not follow the footsteps of previous offenders, and 3) protect the interests of the victim or members of disadvantaged communities (sacrificed) by criminals. Among the goals are important in the formulation of legal education (*education law*) contained in the criminal law of Islam. Humans are trained to respect and protect the human rights of others, in a way to prevent yourself and actions of the acts that tend to harm, rob and rape the rights of other human beings.

Thus, the purpose of advocacy wives who are victims of domestic violence by Islamic law can be examined from three angles of interest, namely the victim, offender and community. Wives who are victims of domestic violence, will be on his side (living outward and inward), and to avoid prolonged suffering, both physical pain and psychological suffering.

Similarly, husbands who commit domestic violence will be a deterrent, and consciously so determined to avoid acts of domestic violence in later life. Husband will also gain enlightenment morality so always pay attention to, and fulfill the rights of his wife. This means that the protection of victims of domestic violence is intended as a means of improvement (*al-ah ISL*). Thus the domestic life and life will return to normal household Vegas will be realized.

In addition masyarakatpun will be more enlightened to avoid acts of domestic violence. Because in addition to fear of conviction, the public has also been able to feel the suffering of the victims, so that people felt to their partner did not have the heart to do it, especially a husband to his wife. It is based on the assumption, that the repression of Islamic law aimed at prevention and retaliation (*al-waal-zajru raddu*), as well as educational efforts and teaching (*al-ta'di?B wa al-tahzī? B*). The concept of retaliation is basically not as a goal of punishment, but a reflection of the occurrence of crime. Retaliation in the criminal sanctions are essentially preventive and educational. If the two goals of punishment had been realized, the benefit in the form of peace, security, peace, order and prosperity will be achieved.

From the description it can be argued, that the purpose of advocacy wife who are victims of domestic violence by Islamic law are:

- (1) Prevention (*al-raddu*): husband withstand repeated offenses of domestic violence to the wife, so the wife is protected, as well as protecting others (society) in order not to commit domestic violence as well. Thus, the double aim, namely the prevention specifically for perpetrators of domestic violence, and general prevention for the community, as well as prevention for victims.

- (2) Education and instruction (*ta'dib* and *tahzīl*? B) against the perpetrators of domestic violence, in order to be a good person and a good member of society anyway. In addition, the husband reminded of its obligation to fulfill the rights and treats her well.
- (3) To maintain the public (*beneficiaries al-'amma*). Protection of wives who are victims of domestic violence through the provision of punishment to the perpetrators, in fact have a broader purpose to protect the public, so that people do not commit the same crime, while protecting the public from the dangers of the crime. This means, increase public awareness.
- (4) To rehabilitate the physical, mental and spiritual victim (wife).

Advocacy against wives who are victims of domestic violence, it does not directly have a purpose that is *transcendent*, that husband and wife can achieve a happy life, in the afterlife. Because avoiding spouses of domestic violence will be able to dissuade him from the torment of hell. This is in line with the principles of Islam that combines life goals that are profane and transcendent.

Community consisting of household (family) who avoid domestic violence will also feel serene, comfortable and peaceful. Thus the protection of victims of domestic violence by Islamic law has a goal to maintain the benefit of the people (*hifz al-'ummah*).

#### 4.2 Equation purpose Advocacy Domestic Violence Victims

Based on the analysis in the previous description can be argued, that the equation advocacy goals wife who are victims of domestic violence according to Indonesian criminal law (*Law No. 23 of 2004*), is equally aimed at providing security and justice to the abused wife in the household of her husband. In a broader scale advocacy goals wives who are victims of domestic violence, it is a life to realize the benefit of a just society, peaceful, safe, and peaceful to live a life of traffic in the world.

Living embodiment benefit victims of domestic violence in particular and society in general benefit of living under Islamic law can be reviewed from the expression *fi al-Qur'an al-QISAS hayatun* (in execution of the sentence was retribution aimed at preserving human life). Clearly, that advocates Islamic law against the wife of domestic violence will be able to substantially preserve the useful life of the wife, so he can run safely reproductive function anyway. Within this framework, means Islamic legal advocacy for victims of domestic violence, in addition to bringing benefit to the wife (the victim) can also realize the benefit of its offspring so that the regeneration takes place quality.

Also closely associated with the goal of realizing the benefit of the wife living who are victims of domestic violence, then Islamic law gives dispensation to take his own wife living without the knowledge of her husband's property (if the husband is not sufficient to provide a living wife or do not provide a living). Bgeitu also to realize the benefit of the wife living who are victims of sexual violence in the household, he was released from the punishment of adultery. if forced by her husband to be sold into prostitution. If the husband and wife forced anal sex, or having sex during menstruation wife, childbirth, or coerced into sex during the day in Ramadan, then the wife is not punishable *ta'zi' R*, but the husband imposed *expiation's* Wife is also exempt from punishment if the rapist was killed while she was defending herself from a rapist (men who have bought the victim of her husband).

Consistent with the description of Abdul Qadir Ouda said, that the law has in common with the modern state legislation and not unlike the Egyptian laws concerning the release of punishment for those who harm the perpetrator forced *a finger? Mah*, due to emergency conditions. This implicitly suggests, that the purpose of advocacy for his wife who are victims of domestic violence by Islamic law in line with the goals of advocacy victims of domestic violence according to Indonesian criminal law set forth in *Law No. 23 of 2004*.

Thus, the purpose of advocacy against wives who are victims of domestic violence under the *Act No. 23 of 2004*, and Islamic law have in common, which is to realize the dignity of (the glory), and the wife's independence as a human being. According to al-Zuhaili Wahbah?, Human dignity and freedom is a fundamental right of every human being. Strictly speaking, advocacy against wives who are victims of domestic violence according to Indonesian criminal law (*Law No. 23 of 2004*), is equally aims to form a community anti-crime (*non-criminal society*).

However, the purpose of advocacy against wives who are victims of domestic violence in the Islamic law different from that of the victim advocacy domestic violence according to *Law No. 23 Year 2004*, the advocacy goals of domestic violence victims according to *Law No. 23 2004* only oriented to the benefit of the victim's life and society, as well as actors in the world in life (Rofan) only. While the purpose of advocating victims of domestic violence according to Islamic law is oriented to the happiness of life, both in this world and the Hereafter (profane and transcendent) both victims, communities and offenders.

#### 5. Conclusion

1. Advocacy methods Indonesian criminal law (*Law No. 23 of 2004*) against wives who are victims of domestic violence from her husband, using three methods, namely (1) preventive method (temporary protection from

police and court protection), (2) repressive methods (convict husband (violent offenders), and (3) methods of rehabilitation (restoration of physical health, and psychological victims of domestic violence). while advocating methods of Islamic law on wives who are victims of domestic violence through three stages, namely educational, preventive (hakamain) and repressive (punishing the perpetrators). So, the difference: the Indonesian criminal code does not use an educational method, while Islamic law is not curative method. Yet the similarities in the use of preventive and repressive methods.

2. Sanctions against perpetrators of domestic violence according to Indonesian criminal law is imprisonment or a fine. Meanwhile, according to Islamic law, the punishment for the perpetrators of violence are adapted to do and the consequences for the victim. In this case the perpetrators of physical violence, sentenced to *qisas-diyat*, perpetrators of psychological violence (charges of adultery without proof) whipped 80 times. Perpetrators of sexual violence (anal sex) was sentenced to pay *kifarat*. While economic abuser sentenced to prison. Thus, the difference: Indonesian criminal law in practice is to use imprisonment. Criminal penalties have not been applied in the verdict. Islamic law while using *jarimah qisas, diyat, qazaf, kifarat, and ta'zir*. Weighing criminal sanctions for perpetrators of domestic violence according to Indonesian criminal law is determined by the judge, according to Islamic law while only sanction perpetrators of economic crime specified by the judge.

But the equation is imprisonment for perpetrators of violence for perpetrators *diyat* economic and physical violence at the prison on the Indonesian criminal law.

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