
THE URGENCY OF COUNSELING AS AN ADDITIONAL CRIMINAL SANCTION TO PREVENT DIVORCE IN THE PERSPECTIVE OF ISLAMIC FAMILY LAW

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Abstract

Domestic violence (*marietal crime*) in Indonesia often occurs and there is always an increase, domestic violence is one of the factors causing the high divorce rate in Indonesia. In the PKDRT Law, the regulation of criminal sanctions of imprisonment or confinement is not also effective as an *ultimum remedium*. On the other hand, judges are more inclined to use the sanction of imprisonment without considering counseling as an additional criminal which is an applicable policy that needs to be tried in maintaining harmony and integrity of marriage. For this reason, it is necessary to study the urgency of counseling as an additional criminal sanction for domestic violence crimes and how Islamic family law assesses this. This research is a normative research with a normative juridical approach that uses study materials in the form of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, the Quran, hadith, and books and articles related to the problem studied. Then the study material is analyzed in a qualitative descriptive manner. The results of the study show that domestic violence has a very significant impact on victims, ranging from suicide attempts, physical injuries, being infected with sexually transmitted diseases, paralysis, mental health disorders, loss of confidence, job loss, criminalization, to divorce. So, additional counseling for domestic violence perpetrators should be applied to prevent bad things from happening, one of which is divorce. The existence of additional counseling provides a more controlled space and process for domestic violence perpetrators to improve themselves, domestic violence victims can recover from trauma, and avoid wider impacts in marriage (divorce). In Islamic Family Law, maintaining the integrity of the family is paramount and avoiding things that can cause divorce. Therefore, additional counseling needs to be imposed as part of *maqoshid al-Ghayatu li al-nikahi ila ahli al-sakinah wa al-waRahmah*

Keywords; Domestic Violence, Counseling, Islamic Family Law

INTRODUCTION

Domestic violence is a form of crime that often occurs, with various causative factors, including economic factors, infidelity, stress, and others. Most of the victims were women and children. Domestic violence as an act that is completely contrary to the purpose of marriage. The purpose of marriage according to the Qur'an is for the happiness and peace of both parties. Marriage is also a process of uniting two parties into one container called the family, in this family awareness and responsibility will be born, which are bound by the social contract ("*Aqad al-Tamlik*") and religious contracts that have value as worship ("*aqad al-Ibadah*").³

Domestic violence, which is hereinafter abbreviated as domestic violence, is an act of violence committed by a husband against a wife, a wife against a husband, a parent against a child,

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³ Yulian Dwi Nurwanti and Muhammad Aziz Zaelani, "Domestic Violence from an Islamic Perspective," *Journal of Research Serambi Hukum* 16, no. 01 (February 27, 2023): 116–127.

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a child against a child, or a caregiver with a child. This means that domestic violence is all violence that occurs in the family environment that can cause death or injury. In article 1 of the Law on the Elimination of Domestic Violence, which is abbreviated as the PKDRT Law. Domestic violence is violence that occurs in a close relationship, both in relationships due to marital ties, unofficial relationships/dating, parents and children, ex-husbands or ex-girlfriends, and domestic workers. Close relationships, it is easier for the perpetrator to commit violence against the victim, and is unknown to outsiders. This condition causes domestic violence cases to be not easy to detect and occur repeatedly. Or in other words, violence is "any act against a person, especially a woman, that results in physical, sexual, psychological, and/or domestic misery or suffering, including threats to commit unlawful acts, coercion, or deprivation of independence within the scope of the household". According to Thomas Santoso, violence is a behavior, both open and open ⁴(*overt*) such as a fight, or closed (*covert*) such as threatening behavior, or those that are offensive (*offensive*), that is, violence that is committed not for protection but to obtain something, and which is durable (*defensive*), i.e. violence in self-defense, which is accompanied by the use of force by others.⁵

Factual violence against women shows evidence and reflects the inequality of socio-cultural power between men and women. This opinion is based on and understood that violence against women and personal relationships is a criminal act that provides an opportunity for victims to prosecute the perpetrators in court. In general, the number of violence reported to Komnas Perempuan in 2024 is 445,501 cases. The number of cases in this case has increased by 43,527 cases or around 9.77% compared to 2023 (401,975). The number of complaints received by Komnas Perempuan in 2024 amounted to 4,178 cases, a decrease of 4.48% from the previous year. Although there has been a decrease in the number of cases complained, the average complaint of Komnas Perempuan is 16 cases/day. Then based on the report submitted by Candra Boy Sroza from the Director General, Badilag that divorce cases at the Supreme Court's Religious Justice Agency cited by Agustin Hanafi and Evi Jusmaidar, it is known that almost 50% of the reasons for divorce are due to domestic violence by husbands, including physical, psychological, sexual violence, and abandonment of responsibility.⁶⁷

In the table below, the number of divorce cases caused by domestic violence based on a survey from the Central Bureau of Statistics in 2023-2024 in several provinces in Indonesia has increased from the previous year:

⁴ Ibid.

⁵ Galih Bagus Soesilo and Septi Indrawati, "Criminal Policy and Restorative Justice as an Effort to Overcome the Occurrence of Domestic Violence," *Amnesty* 3, no. 2 (August 2021): 87–96.

⁶ Member of Komnas Perempuan, National Commission on Anti-Violence Against Women, Jakarta, 2025:1-13

⁷ Agustin Hanafi and Evi Jusmaidar, "The Impact of Potential Domestic Violence on the Increasing Divorce Rate (Case Study at the Syariah Court "iyah Meulaboh)," *Usrah* 5, no. 1 (April 2024): 137–145.

Table 1 Provinces with Domestic Violence as the Highest Factor in Divorce

NO	PROVINCE	FACTORS OF DOMESTIC VIOLENCE DIVORCE	
		2023	2024
1	EAST JAVA	1,636 CASES	1,958 CASES
2	WEST JAVA	442 CASES	653 CASES
3	SOUTH SUMATRA	259 CASES	427 CASES
4	CENTRAL JAVA	235 CASES	336 CASES
5	BANTEN	224 CASES	290 CASES

The number above does not necessarily indicate all existing cases. Because there are still many cases that are not reported or this is not known because domestic violence is difficult to uncover. This is because, First,, Domestic violence occurs in the privacy of households, so that other people should not interfere. Second, the lack of public awareness of the legal rights they have. Third, structurally victims of economically weak parties. Fourth, there is a social stigma that violence is understood as a normal thing in the context of education, so victims are reluctant to report to law enforcement because they are afraid of being blamed (*blame the victim*).⁸

Domestic violence is also still a factor that triggers divorce in Indonesia, which is quite high. In fact, domestic violence can be eliminated or reduced because the government has made Law Number 23 of 2004 concerning the Elimination of Domestic Violence, this regulation was created so that domestic violence does not occur again, but in fact it is very difficult to realize the PKDRT law. On the other hand, domestic violence by imposing severe criminal sanctions on the perpetrators will have an impact on the collapse of the institution of marriage itself (divorce) and even give rise to new problems such as neglected children's rights, unhealthy marital relationships, and even financial problems. In the PKDRT Law, there are additional criminal sanctions in the form of counseling⁹ In addition to the main crimes, namely imprisonment and fines. Therefore,¹⁰This paper will outline how additional counseling is regulated in the PKDRT Law and its urgency from the perspective of Islamic family law.

METHOD

This research is a normative juridical legal research, the type of data used is qualitative data sourced from secondary data consisting of primary legal materials in the form of the PKDRT Law, the Quran, and hadith related to the research problem. Secondary legal materials obtained from

⁸ Soesilo and Indrawti, "Criminal Policy and Restorative Justice as an Effort to Overcome the Occurrence of Domestic Violence."

⁹ Counseling is the provision of assistance by an expert or a person who is trained in such a way that self-understanding and psychological abilities can increase in solving the problems faced

¹⁰ Nurma Arianty Siregar and Listyaningsih Listyaningsih, "Efforts to Prevent and Handle Violence of Women and Children in the Domestic Sphere," Moral and Civic Studies 10, no. 4 (July 6, 2022): 1022–1037.

reference books, journal writings, and doctrines in law, as well as classical and contemporary fiqh, then secondary legal materials in the form of news from mass media, the internet, and reports related to research materials. Data analysis uses a qualitative descriptive method, by describing the data in the form of regular, logical, and non-overlapping sentences.¹¹

RESULTS AND DISCUSSION

Counseling as an Additional Criminal Sanction in the PKDRT Law

Violence is terminologically defined as an act that is contrary to human values. Neli Allan limits the scope of internal violence to forms of violence against children (*child abuse*) and violence against wives (*Wife abuse*) or there are also those who associate this violence with violence against the spouse (*Spouse Abuse*) due to intimacy during the courtship period. In Straus's opinion, Gelles da Steinment defines violence against a spouse as the torture that both husband and wife can inflict on each other, although most argue that it is the man who is the main perpetrator. In the Indonesian dictionary, violence is defined as a harsh nature, violent activities, coercion, cruelty. In English, you also know the word ¹²¹³*Violence* which is considered an attack or invasion of a person's physical or integrity. Meanwhile, violence in the Indonesian language is generally understood to only concern physical attacks. The PKDRT Law provides provisions for acts that are categorized as domestic violence, including:¹⁴¹⁵

1. Any person who commits an act of physical violence within the scope of the household that results in the victim falling ill or seriously injured, the victim dies;
2. Anyone who commits an act of psychological violence within the scope of the household;
3. Anyone who commits an act of sexual violence within the scope of the household;
4. Domestic neglect includes the threat to commit unlawful acts, coercion, or deprivation of independence within the scope of the household.

Meanwhile, for additional criminal sanctions for counseling in Article 50 of the PKDRT Law: *"In addition to the criminal offence as referred to in Chapter III, the judge may impose additional penalties on the artist: (a) Movement Restrictions of the perpetrator, both which aim to distance the perpetrator from the victim within a certain distance and time, or the restriction of certain rights of the perpetrator; (b) The determination of the perpetrator is to follow a counseling program under the supervision of the Tertery Institution.* This crime is intended to help domestic violence perpetrators to change violent behavior and prevent similar violence from occurring in

¹¹ Sugiyono, *Qualitative Research Methods* (1: Alfabeta, 2018). See also, Marzuki, Peter Mahmud, *Legal Research*, Surabaya, Kencana Prenada media Group, 2010; 93-164

¹² Adi Pratama, Suwarno Abadi, and Nur Hidayatul Fithri, "Legal Justice for Women as Victims of Domestic Violence (Kdrt)," *Journal of Law Wijaya Putra* 1, no. 2 (August 16, 2023): 148–159.

¹³ Ministry of Education and Culture, "Kamus Besar Indonesian" (Jakarta: Balai Pustaka, 1984), 489.

¹⁴ Abdul Haq Syawqi, "Islamic Law and Domestic Violence," *De Jure: Journal of Law and Sharia* 7, no. 1 (June 1, 2015): 68–77.

¹⁵ Articles 44-53 of Law number 23 of 2004 concerning the Elimination of Domestic Violence

the future. Thus, the PKDRT Law has clearly regulated the existence of additional criminal sanctions in the form of counseling as the most important part of handling victims and as an additional penalty for perpetrators, with the aim of protecting victims and preventing violence in the ladder from happening again in the future.

Additional Criminal Urgency Counseling as an Applicative Solution in the Prevention of Domestic Violence and Divorce

Based on the previous description, it is explained that domestic violence perpetrators can be sentenced to imprisonment, namely an additional penalty for determining the perpetrator to participate in a counseling program under the supervision of a certain institution. Etymologically, counseling comes from English *counselling*. Counseling is a guidance given to individuals face-to-face (*face to face*) through interviews (*Face to face*) Forming a reciprocal relationship from interviews is a hallmark of counseling. Counseling is also a professional interaction between counselors and counselees that is diadic (two-way) and aims to improve the counselor's ability to adapt. Furthermore, counseling can be understood as an effort to help individuals (¹⁶*counsellor or Client*) face-to-face so that he can overcome the problems he faces, meaning counseling here is a form of assistance provided to solve the problems faced by a person.¹⁷

Objectives of Counseling in general:

1. In order for counselors to be able to change their behavior in a more advanced direction (*progressive bahavior changed*), through the implementation of optimal developmental tasks, independence and happiness in life. For example, perpetrators can learn more effective communication, emotion management, and look for constructive problems.
2. To help individuals develop themselves optimally and *predispose* (such as basic abilities and talents), various existing backgrounds (family, education, socioeconomic status) and with positive family guidance.
3. Helping individuals to become useful people in their lives who have various insights, views, interpretations, choices, adjustments, and appropriate skills regarding themselves and the environment.

Specific Purpose of Counseling

- 1) Depending on the problem faced by the individual (example of the purpose of this counseling is the problem of domestic violence)
- 2) Describe from the general purpose that is relevant the problems faced by individuals with all their complexities.¹⁸

¹⁶ Nurul Hartini and Atika Dian Ariana, *Developmental Counseling Psychology and the Application of Counseling in Psychology*, 1st ed. (Surabaya: Airlangga University Press, 2015).

¹⁷ Ulfiah Ulfiah, "Family Counseling to Increase Family Resilience," *Psymphatic : Scientific Journal of Psychology* 8, no. 1 (July 3, 2021): 69–86.

¹⁸ Boy, Hartono, Soedarmidji, *Counseling Psychology*, 1st ed., vol. 1 (Jakarta: Kencana, 2012).

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Counseling programs for domestic violence perpetrators are not widely known as an alternative solution. Prison sentences are still the sole punishment for domestic violence perpetrators. The rules for counseling have also not been fully regulated in the legislation and it is not clear which institution can provide such counseling. So far, counseling can still be provided by non-governmental institutions that have services such as the Women's Crisis Center. This institution believes that perpetrators of violence can change their behavior through a learning process including how to manage emotions, build an equal relationship, and how to prevent violence. Australia, for example, has begun to improve the implementation of intervention programs for domestic violence perpetrators as a long-term strategy, by establishing a men's *behavior change program (MBCP)*. The goal is to improve safety for women and children, ensure that there is accountability for their actions and ensure that there is a change in the behavior of the perpetrator.

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There are several problems that cause counseling as an additional crime to rarely be carried out by judges because of several considerations, first, the instrument is not clear, second, there is no special counseling institution that petrifies victims of domestic violence and domestic violence perpetrators to maintain their marriage or household; third, the PDRT Law has never been fully implemented; fourth, victim protection has not been effective; Fifth, socialization has not been implemented; sixth, the executive and legislative institutions have not provided clear tools related to counseling as an additional punishment; Seventh, the prosecutor has never charged with an additional crime in the form of a counseling program. This problem that is an obstacle must be immediately responded to by the government by carrying out various progressive legal policies to strive for domestic violence not to recur. From a criminological perspective, the increase in domestic violence can also be caused by inappropriate sanctions so that they do not have a deterrent effect on the perpetrator or learn from individuals who have the potential to commit domestic violence.²⁰²¹

Domestic violence has a very significant impact on victims, ranging from suicide attempts, physical injuries, being infected with sexually transmitted diseases, paralysis, mental health disorders, mental disorders or *self-destructive behavior (self-destructive behavior)*, loss of confidence, job loss to criminalization. It is even more serious if a divorce occurs. The imposition of a criminal sentence on a person who is considered guilty in the criminal law, can start from the convict's actions in the past and to improve his attitude in the future. If it is based on the past, then the purpose of punishment is retribution, but if it is oriented to the future, then the criminal purpose

¹⁹ Bestha Inatsan Ashila, "Involving Men ; The need for counseling for domestic violence survivors to stop violence against women," *Bakti News* (Jakarta, 2024).

²⁰ Riya Hayuna, "Counseling as an Additional Criminal Sanction for Domestic Violence (Study of the Judge's Decision of the Yogyakarta District Court and the Bantul District Court in 2020-2014" (UII, 2015); Peter Mahmud Marzuki, *Legal Research*, 6th ed. (Surabaya: Kencana Prenada Media Group, 2010).

²¹ Usman Usman et al., "Customary Domestic Violence Resolution From a Restorative Justice Perspective," *Journal of Humanities Socio-Science* 6, no. 2 (November 30, 2022): 1–14.

is to improve the behavior of the convict. This is what then in criminal law as a relative theory or objective theory. Which in essence views crime as an effort to create order in society is not only an attempt to retaliate for the mistakes of others.²²

Based on the fact that there are still high cases of divorce due to domestic violence in Indonesia, counseling as an additional criminal sanction is urgent, of course, technical instruments are still needed to regulate counseling to be clear and directed, because there are barriers to implementation, counseling programs must also be monitored and evaluated regularly to suit their goals and as a form of prevention of criminal acts and efforts to facilitate marriage stay intact. Because violence is a behavior that is learned from the environment, it is important to stop the growth of this behavior. Thus, violence is not an irreversible behavior or character. Furthermore, it is up to the belief in the purpose of marriage. The hope is to form a happy and eternal family (household) based on the One Godhead

From the description above, it can be concluded that counseling can be applied as an additional penalty. This means that in addition to the main penalty of imprisonment or confinement, the perpetrator can be forced to participate in a counseling program under the supervision of a certain institution. The purpose of counseling itself is to provide assistance to domestic violence perpetrators so that there will be no recurrence in the future. It can change the way they view violence. Counseling will encourage domestic violence perpetrators to be more responsible and not use violence as a way to resolve conflicts. In addition, it can also help victims of violence recover from trauma.

The Use of Additional Criminal Counseling as an Effort to Prevent Divorce in the Perspective of Islamic Family Law

Marriage, both from a religious and state perspective, has gained legality and has been established as something that is lawful with several applicable terms and conditions. Based on Law Number 16 of 2019 *Jo* Law Number 1 of 1974 concerning Marriage, in article 1 states that "*Marriage is an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal household based on the divinity of the One True God.*" And in Islamic law in Indonesia, marriage is regulated in the Compilation of Islamic Law as explained in Chapter 2 article 2, "Marriage, which is a very strong *aqad* or "*Mitzvah-Ghalidzan*" to obey God's commands and marriage is worship. From this description, it can be understood that marriage is:

1. The Bond of Birth and Mind between a man and a woman as husband and wife
2. The bond is innate and is intended to form a happy, eternal and prosperous family (household).
3. The basis of the bond of inner birth and the eternal purpose of Happiness is based on the One Godhead.²³

²² Siregar and Listyaningsih, "Efforts to Prevent and Handle Violence of Women and Children in the Domestic Sphere." *Journal of Moral and Civic Studies*, vol.1. 2022:122-137

²³ Santoso, "The Right to Marriage According to Marriage Law, Islamic Law and Customary Law," *Judisia* 7, no. 2 (2018): 413–415.

The basis of marriage in Surah Ar-rum verse 21:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

Meaning: "And among the signs of His greatness is that He created pairs for you and your own kind, so that you may be inclined and at peace with Him, and He has made among you love and affection. Indeed, in such a thing there are signs (of the greatness of Allah) for the people who think."

Based on this verse, the marriage proposal and motive are very grand and noble, because marriage itself is the place of inauguration of love, affection and an intimate mutual relationship between husband and wife. Islam views marriage as worship because it aims to form a happy and eternal family life, in addition to preserving the survival of human children, it should also ensure stability in the social order and the existence of the dignity of men and women.²⁴

In essence, Islam does not specifically and implicitly define domestic violence as a criminal act or *jarimah*. However, Islamic teachings expressly prohibit the occurrence of domestic violence as evidenced by the existence of verses contained in the Qur'an, as well as hadiths that clearly command husbands to treat their wives with good association. In QS. An-Nissa verse 19 states:

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

"O you who have believed, it is not lawful for you to inherit a woman by force, and do not trouble them because you want to take back what you have given her, unless they do a real abominable deed. And associate with them appropriately. Then if we do not like them, (then be patient) because perhaps you do not like something, but Allah has done him a lot of good."

The context of the above verse is that all marital relations must be in the ways of *mu'asyarah bil ma'ruf*, governed by the principles of mutual respect, responsibility, and maintaining honor. In the PKDRT Law in article 4, one of the aims to maintain the integrity of a **harmonious and prosperous household is to maintain the integrity of the household**. This means that everything regulated in the PKDRT Law is to bring as much benefit to humans as possible. In Islamic family law, marriage counseling is a form of effort to create a *sakinah family that is mawadah warahmah or maqoshid al-Ghayatu li al-nikahi ila ahli al-sakinah wa al-rahmah* (making a happy, prosperous and harmonious household). This is the vision of marriage in Islam.²⁵

The meaning of *Sakinah* is according to calm or peaceful language. Thus, literally the term *Sakinah* family means a family that is calm, peaceful, does not have many conflicts, and is able to solve the problems faced. The *Sakinah* family is also defined as a family in which it is always

²⁴ M. Yahya Harahap, *National Marriage Law*, 5th ed. (Medan: CV. Zahir Tranding, 1975).

²⁵ Nurhadi, "Maqoshid Sharia Marriage Law in the Compilation of Islamic Law (KHI)," *Al-Fikra* 16, no. 2 (December 2017): 203–231.

overwhelmed by love (*mawadah*) and affection (*Rahmah*), according to QS. Ar Rum verse 21). According to M. Quraish Shihab, the word *Sakinah* is taken from the root of the word consisting of the letters ²⁶*sin*, *kaf*, and *nun* which contain the meaning of serenity or antonyms of shock and motion. In various forms of words consisting of three letters, all of them boil down to the house which is interpreted as *maskan* because it is a place to achieve calm after previously the occupants moved, and may even experience shocks outside the house. The knife that functions to slaughter animals is named *sikkin* from the same root as *sakinah* because the knife is a tool that produces strength for the animal, after previously being turbulent. He emphasized again that *Sakinah* did not come just like that, but there were conditions for his presence. It must be fought for and the first and foremost thing is to prepare the heart. *Sakinah* or serenity as well as *mawaddah* and *Rahmah* originate from the heart, then radiates outward in the form of activities. However, it must be realized, it does not mean that every marriage always gives birth ²⁷ to *Sakinah*, *mawadah*, and *Rahmah*.

Thus, the use of additional criminal counseling as an effort to prevent divorce in the perspective of Islamic family law can be applied to create *a Sakinah, mawadah, and warahmah family or maqoshid al-Ghayatu li al-nikahi ila ahli al-sakinah wa al-rahmah (making a Happy and Prosperous Household)*

CONCLUSION

Basically, additional counseling crimes against domestic violence perpetrators have been regulated in the PKDRT Law. However, it has not been implemented, because there are various obstacles in the Indonesian judicial system. Considering that domestic violence has a very significant impact on victims, ranging from suicide attempts, physical injuries, being infected with sexually transmitted diseases, paralysis, mental health disorders, loss of confidence, job loss, criminalization, to divorce. So, it should be applied to the additional penalty of counseling against domestic violence perpetrators to prevent bad things from happening, one of which is divorce. The existence of additional counseling provides a more controlled space and process for domestic violence perpetrators to improve themselves, domestic violence victims can recover from trauma, and avoid wider impacts in marriage (divorce). In Islamic Family Law, maintaining the integrity of the family is paramount and avoiding things that can cause divorce. Therefore, additional counseling needs to be imposed as part of *maqoshid al-Ghayatu li al-nikahi ila ahli al-sakinah wa al-waRahmah*

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²⁶ Muhammad. Quraish Shihab, *As Bright as the Divine Light Living with the Qur'an*, 2nd ed., vol. 2 (Bandung: Mizan, 2007).

²⁷ Ibid.

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