

RECONSTRUCTION OF *MAQÂSHID AL-SYARÎ'AH* AS AN APPROACH TO CONSTITUTIONAL LAW IN OVERCOMING CRIME IN INDONESIA

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Abstract: In Indonesia, the crime rate still reaches 1.01% in 2020, but crime still exists and is a state concern. The purpose of this study is aimed to analyze the offer of *maqâshid al-syarî'ah* as a solution in overcoming crime in Indonesia. This study is qualitative research in nature with a literature review approach. The object analyzed is Article 29 of UUD 1945 which is analyzed with the concept of *maqâshid al-syarî'ah* in the study of Islamic law. The results of this study describe that the *maqâshid al-syarî'ah* concept can be a solution to overcome crime in Indonesia as its concept regulates various things including God's purposes (*qashdu al-syârî'*) and *mukallâf* goals (*qashdu al-mukallâf*) as well as the perspective of constitutional law in the crime in Indonesia. The state regulates matters contained in the state of the fundamental norm, namely the constitution contained in Article 29 of UUD 1945. This article uses a religious approach as a basic rule to regulate the life of the Indonesian legal community so that they live a good life and do not commit the crimes contained in the UUD 1945. Internalization of *maqâshid al-syarî'ah* in constitutional law is an alternative to protecting citizens from various crimes.

Keywords: *maqâshid al-syarî'ah*; crime; constitutional law; public interest.

Abstrak: Di Indonesia, angka kejahatan masih mencapai 1.01% pada tahun 2020, artinya kejahatan masih ada dan menjadi perhatian negara. Tujuan penelitian ini adalah menganalisis tawaran *maqâshid al-syarî'ah* sebagai solusi dalam mengatasi kejahatan di Indonesia. Penelitian ini merupakan penelitian kualitatif dengan pendekatan kajian pustaka. Objek yang dianalisis adalah pasal 29 UUD 1945 yang dianalisis dengan konsep *maqâshid al-syarî'ah* dalam kajian hukum Islam. Hasil penelitian ini menguraikan bahwa konsep *maqâshid al-syarî'ah* dapat menjadi solusi untuk mengatasi kejahatan di Indonesia sebagaimana konsep *maqâshid al-syarî'ah* mengatur berbagai aspek diantaranya yaitu tujuan Allah (*qashdu al-syârî'*) dan tujuan *mukallâf* (*qashdu al-mukallâf*) dan begitu juga dengan perspektif hukum tata negara dalam melihat kejahatan di Indonesia. Negara mengatur hal yang terdapat pada *staats fundamental norm*, yaitu konstitusi yang terdapat di dalam UUD 1945 pasal 29. Pasal ini menggunakan pendekatan agama sebagai aturan dasar untuk mengatur tata kehidupan masyarakat hukum Indonesia agar menjalankan kehidupan dengan baik dan tidak melakukan kejahatan sebagaimana yang tertuang di dalam UUD 1945. Internalisasi *maqâshid al-syarî'ah* dalam hukum tatanegara menjadi alternatif dalam menjaga warga negara dari berbagai kejahatan.

Kata kunci: *maqâshid al-syarî'ah*; kejahatan; hukum tatanegara; kemaslahatan.

Introduction

Crimes in Indonesia are categorized as high level. The high crime, of course, should not be allowed but must be eliminated or minimized. Therefore, any evil in this earth must be eliminated to achieve peace.¹ In the concept of *ushûl fiqh*,

crime as a form of harm must be eliminated because the prophet Muhammad SAW said that one should not harm to oneself or to others.² For this reason, the *fiqhiyyah* rules formulated by scholars state that eliminating harm is more

¹ Siti Hikmah, "Mengantisipasi Kejahatan Seksual Terhadap Anak Melalui Pembelajaran 'Aku Anak Berani Melindungi Diri Sendiri': Studi Di Yayasan al-Hikmah Grobogan," *Sawwa: Jurnal*

Studi Gender, vol. 12, no. 2 (2017), pp. 187–206.

² Ibnu Abu Bakar As Suyuti, *Al Asybah Wa An-Nazair*, (Indonesia, Daar Ihya'Al Kutub Al-Arabiyyah, 1999), p. 74.

important than seeking benefit.³

Fluctuating, the results of the 2020 Criminal Statistics Publication survey provide an overview of the level and development of crime in Indonesia during the 2017–2019 period. The information presented includes three main approaches to criminal statistics, namely the perpetrator, victim, and regional approach. The data presented are obtained from two main sources of criminal statistics, namely administrative-based data compiled by the Indonesian National Police (POLRI) and survey-based data sourced from the National Socio-Economic Survey and Village Potential Data Collection based on the Central Statistics Agency. Police registration data notes that the crime rate during the 2017 to 2019 period has decreased. The level of risk of being exposed to a crime per 100,000 population in 2017 was around 129, to 113 in 2018, and decreased to 103 in 2019. Susenas data which describes the percentage of the population who become victims of crime in Indonesia during the period 2018 to 2019 also shows a declining pattern. The percentage of the population of victims of crime has decreased from 1.11 percent in 2018 to 1.01 percent in 2019. Based on this data, from 2011 to 2018 the number of villages that became the scene of mass conflict tended to increase from 2,500 villages in 2011 to around 2,700 villages in 2014. The data increased again to around 3,100 villages in 2018.⁴

The number of criminal cases that occur is not directly proportional to the condition of Indonesia, which is a state of law. Indonesia is a legal state as stated in the 1945 Constitution in Article 1 paragraph (3). Since the formation of the 1945 Constitution as a fundamental rule of the state, the constitution is a basic rule in all rules and the highest law from all sources of law.⁵ The basic rules discuss various aspects in the form of aspects of religion, society, culture, and the Indonesian universe. The religious approach can be

seen in the values contained in religion. Religion is a system that regulates belief and worship in God Almighty and rules related to culture, and views that connect humans with the order of life.⁶ As is well known, religion has sacred mythology, symbol, and history which is intended to explain the meaning of life and the origin of life or the creator of the universe. Based on their beliefs about the cosmos and human nature, people acquire a morality, ethics, religious law, or lifestyle that suits them.

Seeing the level of crime that occurs in Indonesia, *maqâshid al-syarî'ah* has a general concept, namely realizing human benefit. This goal is in line with the philosophy of God's law as expressed by Subhi Mahmasani,⁷ namely realizing good, rejecting evil, and eliminating evil. The benefit referred to in this case includes everything in human life. This includes human sustenance, the basic needs of life, as well as other needs that humans need. It also includes emotional, intellectual qualities, as well as absolute understanding or understanding.⁸

The problem of crime is a problem of human behavior whose main antidote is a religion.⁹ As a set of guidelines that regulate human relationships with God both vertically and horizontally, religion regulates human relations with other humans and regulates human relationships with their environment.¹⁰ Specifically, religion is defined as a system of beliefs held and actions that are manifested by a group or society in interpreting and responding to what is felt and believed to be supernatural and sacred. Religion contains teachings about the highest and absolute truth

⁶ Kenneth Shouler, *The Everything World's Religions Book: Explore the Beliefs, Traditions, and Cultures of Ancient and Modern Religions*, (Simon and Schuster, 2010).

⁷ Subhi Mahmasani, *Falsafat Al-Tashri Fi al-Islam*, (Leiden: Brill Leiden, 1961), p. 64.

⁸ Ghofar Shidiq, "Teori Maqashid Al-Syari'ah Dalam Hukum Islam," *Majalah Ilmiah Sultan Agung*, vol. 44, no. 118 (2022), pp. 117–30.

⁹ Syafar Alim Siregar, "Pengedar Narkoba Dalam Hukum Islam," *Jurnal Al-Maqasid: Jurnal Ilmu Kesyarahan Dan Keperdataan*, vol. 5, no. 1 (2019), pp. 111–24.

¹⁰ Aisyah As-Salafiyah, Aam Slamet Rusydiana, and Muhammad Isa Mustafa, "Maqashid Sharia-Based Mosque Empowerment Index," *International Journal of Ethics and Systems*, vol. 38, no. 2 (January 1, 2022), pp. 173–90, <https://doi.org/10.1108/IJOES-06-2021-0122>.

³ Nainunis Nainunis, "Covid-19 Dalam Kajian Qawaid Fiqhiyah," *Al-Madaris Jurnal Pendidikan Dan Studi Keislaman*, vol. 2, no. 1 (2021), pp. 89–106.

⁴ "Badan Pusat Statistik," accessed June 2, 2022, <https://www.bps.go.id/publication/2020/11/17/of2dfc46761281f68f11afb1/statistik-kriminal-2020.html>.

⁵ Parsudi Suparlan and R. Robertson, *Agama: Dalam Analisis Dan Interpretasi Sosiologis*, (Jakarta: CV Rajawali, 1988), p. 163.

about human existence and instructions for living to achieve happiness in this world and in the hereafter.¹¹ Therefore, religion can be a part and core of a value system that is in the culture of the community concerned, and become a driving force and controller for the actions of the members of the community to continue to run in accordance with cultural values and religious teachings.¹²

How is the existence of religion in Indonesian law? The state requires its citizens to adhere to religion as regulated in the UUD 1945 in Article 29. In this article, it is stated that the Indonesian state is based on the one and only God and the state guarantees its population to practice their religion. If it is directed at carrying out the religion of Islam, this religion instructs its people to carry out the commandments of *ma'ruf* and forbid evil. In this case, the form of *nahi munkar* is to overcome evil acts committed by humans so that they return to the right path in accordance with the rules of Allah's commands. With the existence of religion, it can be a way of life for Indonesian citizens in order to create an attitude that has morals.

Method

This study is a qualitative research conducted under a literature review approach. This study seeks and analyzes normative juridical conclusions that outline the discussion of *maqâshid al-syarî'ah* as an alternative to overcoming crime in the aspects of constitutional law in Indonesia. The object to be analyzed is Article 29 of UUD 1945 which is mixed with the analysis of *ushûl fiqh*. The analysis is compared with examples of current criminal cases that occur as well as 2020 criminal statistics.

This research approach is normative juridical with an approach that uses a juridical-positivist concept. That is, the law is identical to the written norms made by officials whose status is. This is because the law was made as a normative system that is autonomous, closed, and detached

from people's lives.¹³ With a study approach, this study aims to find and analyze alternative offers of *maqâshid al-syarî'ah* in overcoming the rampant crimes that occur in Indonesia within the framework of Indonesian constitutional law.

Maqâshid al-syarî'ah Privileges

Maqâshid al-syarî'ah is a concept put forward by a scholar named Asy-Syâtibi. As revealed by Al-Thûfi,¹⁴ the idea is taken from one of the rules which revealed "Indeed, sharia aims to realize the benefit of the world and the hereafter". Linguistically, the word *maqashid* itself comes from the word *maqshad* which means goal or target. Departing from this meaning, some scholars have a different understanding or definition of *maqâshid al-syarî'ah*.¹⁵ Al-Fasi, for example, according to him, *maqâshid al-syarî'ah* is God's goal or secret in every sharia law.¹⁶ Meanwhile, ar-Risuni argues that *maqâshid al-syarî'ah* is a goal to be achieved by sharia so that human benefit can be realized. In general, *maqâshid al-syarî'ah* has a purpose for the good or benefit of mankind. This goal is in line with the purpose of God's law which is goodness.¹⁷

In the journal *Maqashid Al-Shari'ah Theory in Islamic Law* written by Ghofar Shidiq, Imam al-Haramain al-Juwaini explicitly said that one cannot be said to be able to establish law before truly understanding the purpose of Allah issuing these orders and prohibitions.¹⁸ The benefit referred to in this case includes everything in human life such as sustenance, basic life needs, educational needs, emotional, and intellectual qualities, as well as absolute understanding.¹⁹

¹³ Zainuddin Ali, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika, 2021), p. 11.

¹⁴ Said Ramdan Al-Buti, *Dawâbit Al-Maṣlaḥah Fī as-Syarī'ah al-Islāmiyyah*, (Bairut: Mu'assasah ar-Risalah, 1993), p. 56.

¹⁵ Ahmad Al-Raisuni, *Nazariyât Al- Maqâshid 'Inda al-Imâm as-Shâthibi*, (Bairut: Muassasah al-Jami'ah, 1992), p. 120.

¹⁶ Busyro, *Maqâshid Al-Syarīah: Pengetahuan Mendasar Memahami Masalah*, (Prenada Media, 2019), p. 70.

¹⁷ Ainol Yaqin, "Rekonstruksi Maqâshid al-Syarî'ah dalam Pengembangan Metodologi Hukum Islam (Kajian Eksploratif Pemikiran Jasser Auda)," *MADANIA: JURNAL KAJIAN KEISLAMAN*, vol. 22, no. 1 (July 3, 2018), p. 63, <https://doi.org/10.29300/madania.v22i1.803>.

¹⁸ Shidiq, "Teori Maqashid Al-Syari'ah Dalam Hukum Islam."

¹⁹ Darji Darmodiharjo, *Pokok-Pokok Filsafat Hukum: Apa Dan Bagaimana Filsafat Hukum Indonesia*, (Gramedia Pustaka

¹¹ Rusyja Rustam and Zainal A. Haris, *Buku Ajar Pendidikan Agama Islam Di Perguruan Tinggi* (Yogyakarta: Deepublish Publisher, 2018), p. 34.

¹² Parsudi Suparlan and R. Robertson, *Agama: Dalam Analisis...*, p. 76.

Ash-Syatibi describes five forms of *maqâshid al-syarî'ah* which are referred to as the five general principles or *al-kulliyât al-khams*.²⁰ Each of these forms has two sides, like (1) *wujud* or protection and (2) *'adam* or prevention. The five forms of *maqâshid al-syarî'ah* are as follows:

a. Protecting Religion

Religion is a system that regulates belief and worship in God Almighty as well as rules relating to culture, and a worldview that connects humans with the order of life. free and uninterrupted. Examples of guarding are performing prayers and zakat. Meanwhile, in terms of prevention, it is carried out with jihad or punishment for apostates.

b. Protecting Soul

The soul is the immaterial part of a person. Usually, the soul is believed to include the mind and personality and is synonymous with spirit, reason, or self. The form of *maqâshid al-syarî'ah* to protect the soul is the basis and reason which states that a human being should not be hurt, or injured, let alone killed. An example of its application is by eating and drinking. Meanwhile, in terms of prevention, it is carried out by means of *qisâs* and *diyât*.

c. Protecting Intellect

Thoughts are ideas and mental processes. Thinking allows a person to represent the world as a model and treat it effectively according to goals, plans, and desires. *Maqâshid* form of sharia to protect the mind or reason. Departing from this, everything that causes loss of mind is not allowed.²¹ This includes taking drugs or alcohol. This includes freedom of expression safely for everyone. Examples of its application in the form of guarding are carried out by eating and foraging. Meanwhile, in the form of prevention, it is carried out by enforcing the law against drug users.

Utama, 1995), p. 74.

²⁰ Ibrahim bin Musa al-Lakhmi al-Gharnathi al-Maliki al-Syathibi, *Al-Muwafaqât Fî Ushûl al-Syarî'ah*, Juz III, (Bairut: Dar al-Ma'rifah, 1987), p. 121.

²¹ Usman Betawi, "Maqashid Al-Syariah Sebagai Dasar Hukum Islam Dalam Pandangan Al-Syatibi Dan Jasser Audha," *Jurnal Hukum Responsif*, vol. 6, no. 6 (2019), pp. 32–43.

d. Protecting Property

Assets are all tangible and intangible assets. In *maqâshid al-syarî'ah* to protect property, guaranteeing that everyone has the right to own property and seizing it from others is prohibited. Both in the form of theft, corruption, and so forth. An example of this application is by carrying out buying and selling and looking for sustenance, while the form of prevention is done by cutting off hands for thieves and avoiding usury.²²

e. Protecting Descent

Heredity is a very important thing to consider as the successor to apply Allah's law on earth. *Maqâshid al-syarî'ah* to protect offspring makes adultery forbidden because it can have a negative impact. Both biologically, psychologically, economically, socially, kinship, and inheritance law. Therefore, protection is carried out in the form of marriage, while prevention is carried out by enforcing the law against people who commit adultery and who accuse others of adultery without any evidence.²³

Is *Maqâshid al-Syarî'ah* Relevant to Overcoming Crime in Indonesia?

Crime in Dutch is called *misdrijven*, which means an act that is disgraceful and is related to the law. A crime is part of an unlawful act or offense, the other part is a violation. "Crime is human behavior created by authorized actors in a politically organized society, or qualifications for unlawful behavior formulated by citizens or communities who have power."²⁴

Crime is a part of people's lives and is something that is inherent in humans. A philosopher named Cicero said, "*Ubi Societas, Ibi Ius, Ibi Crime*," which means there is society, there is law, and there is crime. Communities value each other, communicate, and establish interactions so

²² Afifuddin Kadir et al., "Penggunaan Dana Zakat Pada Korban Covid-19 Perspektif Maqashid Syariah," *Al-Tafaqquh: Journal of Islamic Law*, vol. 1, no. 2 (2020), pp. 107–16, <https://doi.org/10.33096/al-tafaqquh.v1i2.61>.

²³ Mustafid Mustafid, "Larangan Perkawinan Bulan Tuwun Ditinjau Menurut Maqashid Syariah," *TERAJU: Jurnal Syariah Dan Hukum*, vol. 3, no. 02 (2021), pp. 61–70, <https://doi.org/10.35961/teraju.v3i02.289>.

²⁴ Topo Santoso, "Kriminologi," 2007, p. 11.

that it often causes conflict or engagement. One group will assume the other group has deviant behavior if the behavior of the other group is not in accordance with the group's own behavior. This deviant behavior is often considered bad behavior. The definition of crime, from the community's point of view, is any act that violates the rules that live in society.²⁵

According to KUHP (the Criminal Code in Indonesia), the manifestation or form and type of crime can be divided into several groups, namely robbery and gangsterism, which often carry out their operations together with legal organizations, fraud and theft, and violations.²⁶ The concept of *maqâshid al-syarî'ah* is a concept to achieve human life both in this world and in the hereafter. *Maqâshid al-syarî'ah* can be interpreted as values and meanings that are used as goals and are intended to be realized by the maker of Sharia (Allah Swt) behind the making of Shari'a and law, which are researched by mujtahid scholars from Sharia texts. Ash-Shathibi divides *maqâshid* into two, namely the purpose of Allah (*qashdu al-Syari*) and the purpose of *mukallâf* (*qashdu al-mukallâf*). God's purpose is divided into four parts, namely: (1) God's purpose in establishing the law, (2) God's purpose in establishing the law is to be understood, (3) God's purpose in establishing the law is to be endured with all the consequences, and (4) God's purpose in establishing the law when inserting *mukallâf* in sharia law.²⁷

God's purpose in establishing the law is for the benefit of the servant in this world and the hereafter. Syathibi further explained that the real burdens of the law are to maintain the *maqâshid* of the law on creatures. There are only three *maqâshid*, namely *darûriyat*, *hâjiyat*, and *tahsîniyat*.²⁸ *Darûriyat* must exist to maintain the

benefit of the world and the hereafter. If this does not exist, then there will be damage in this world and the hereafter. The level of damage caused is the extent to which the *darûriyat* is lost. Guarding religion, guarding the soul, guarding offspring, guarding property, and guarding reason are the five *maqâshid al-darûriyat*. *Maqâshid al-hâjiyat* is to remove distress from the life of the *mukallâf*. While the *Maqâshid tahsîniyat* is to perfect the two previous *Maqâshid*, which include the perfection of customs, and noble character. Meanwhile, related to the purpose of *mukallâf* (*qashdu al-mukallâf*), Shathibi only discusses a few issues.²⁹

The results of the analysis of the *maqâshid al-syarî'ah* study can be understood as a solution to overcome crime, especially in Indonesia. The realization of this sharia *maqâshid* study can be applied in everyday life, which aims to overcome crime. Because basically all of the above concepts are concepts that examine both the purpose of Allah Swt and the purpose of the *mukallâf* of all aspects related to muamalah that can be applied in everyday life. According to Allah SWT in *al-anbiyâ* [21]: 107:

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ

"And We have not sent you, [O Muhammad], except as a mercy to the worlds".

Mercy for all nature in the verse above is defined by the benefit of the people. In simple terms, a benefit can be interpreted as something that is good and can be accepted by common sense. Accepted by reason implies that reason can know and understand the motives behind the determination of a law, namely because it contains benefits for humans, either by explaining the reasons themselves by God or by means of rationalization. From the above understanding, it can be said that the main discussion in *maqâshid al-syarî'ah* is wisdom and illat stipulated by law. In

²⁵ A. S. Alam, *Kriminologi Suatu Pengantar: Edisi Pertama*, (Jakarta: Prenada Media, 2018), p. 2.

²⁶ S. H. Moeljatno, *KUHP (Kitab Undang-Undang Hukum Pidana)*, (Jakarta: Bumi Aksara, 2021), p. 253.

²⁷ Aidul Fitriciada Azhari, M. Mu'inudinillah Basri, and Fatkhul Muin, "TRANSFORMATION OF MAQÂSHID AL-SYARÎ'AH (An Overview of the Development of Islamic Law in Indonesia)," *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, vol. 11, no. 1 (2016), pp. 1–18.

²⁸ Melissa Towadi, "The Application of Sharia Maqashid

on the Protection of the Rights of Minority of Muslim Rohingya in Regional ASEAN (Indonesia-Malaysia)", vol. 2, no. 01 (2017), p. 12.

²⁹ Achmad Faidi, "Reconstruction of the National Legal System: Study the Implementation of the Maqâsid al-Shari'ah Theory," *AL-'ADALAH*, vol. 15, no. 2 (January 24, 2019), p. 307, <https://doi.org/10.24042/adalah.v15i2.3387>.

the study of *ushûl fiqh*, wisdom is different from *illat*. *Illat* is a certain characteristic that is clear and can be known objectively, the benchmark is clear, and in accordance with the provisions of Allah's law. While wisdom is something that is the goal or purpose of the law in the form of benefit for humans. *Maslahat* in general can be achieved in two ways: (1) realizing benefits, goodness, and pleasure for humans, which is called *jalb al-mâna'fi'* and (2) avoiding or preventing damage and evil, which is often termed *dar al-mafâsid*. As for what is used as a benchmark to determine whether something is good or bad, what is the basic need for human life. Demands for human life are stratified, namely primary, secondary, and tertiary needs.³⁰

In the context of the Indonesian state, where the majority of the population is Muslim, applying the concept of *maqâshid al-syarî'ah* in daily life does not become awkward. Of course, this concept can be applied in everyday life by implementing these concepts in providing understanding for humans. This application can be applied to activities in the world of education. How to apply it comprehensively so that students can understand the purpose of *maqâshid al-syarî'ah* itself and how it can be applied to everyday life, then inculcate norms in early childhood so that a generation is achieved in accordance with the goals of life. man. The next generation of the nation is the generation that continues the struggle of the former founders of the country to run the wheels of government, as well as to continue the life of the state.³¹ This concept is a concept that can be applied to everyday life. Given that humans in Indonesia are people who have religion, of course religion is a way of life for humans to achieve a peaceful life and be able to have a good state.

The *maqâshid al-syarî'ah* concept is a concept map that is contained in the aspects

of safeguarding and aspects of prevention.³² This means that this concept has a way out to overcome existing crimes. Both preventive and persuasive measures in this concept are certainly necessary to overcome crime and minimize crime. Thus, all the objectives of *maqâshid al-syarî'ah* can run as they should.

Constitutional Law as an Alternative to Overcome Crime in Indonesia

Constitutional Law is a branch of legal science that regulates all superior and subordinate legal communities according to their level and each determines the area of the community environment. and finally, determine the bodies and their respective functions in power within the legal community, determining the composition and authority of these bodies. In the context of constitutional law, the object of study is the constitution of a country. In Indonesia, the constitution is called the UUD 1945. It was actually the climax of the struggle of the Indonesian people as well as the masterpiece of the founding fathers of the nation. The specialty of a constitution is that it is very noble by encompassing consensus as well as essential principles in the state.

Thus, the constitution can be said to be a noble national document, which, incidentally, is also a legal and political document. Regarding the meaning of the Constitution, Sri Soemantri called it a formal document that contains (1) the results of the nation's political struggles in the past, (2) the highest level of development of the nation's state administration, and (3) the views of national figures who want to be realized, both for now as well as for the future.

Meanwhile, according to C. F. Strong, "constitutions may be said to be a collection of principles according to which the powers of the government, the rights of the governed, and the relations between the two are adjusted." That is, the constitution can be said to be a set of principles that govern the powers of the

³⁰ Shidiq, "Teori Maqashid Al-Syarî'ah Dalam Hukum Islam."

³¹ Usman Safiyanu Duguri et al., "The Application of Maqasid Al-Shari'ah in the Foreign Policy of Islamic States," *International Journal of Academic Research in Business and Social Sciences*, vol. 11, no. 3 (March 10, 2021), pp. 88-96, <https://doi.org/10.6007/IJARBS/v11-i3/8559>.

³² Nor Hadi and Jadzil Baihaqi, "Motive of CSR Practices in Indonesia: Maqasid al-Sharia Review," *QIJIS (Qudus International Journal of Islamic Studies)*, vol. 8, no. 2 (December 31, 2020), p. 327, <https://doi.org/10.21043/qijis.v8i2.8856>.

government, the rights of the governed, and the relationship between the two. His expectation is that Indonesia will become a peaceful, just, and prosperous country in line with the goals of the state as stated in the preamble or the preamble to the 1945 Constitution.³³

The provisions of Article 29 of the UUD 1945, which states that the state is based on one Godhead, imply that the state is obliged to make laws and regulations or carry out policies for the implementation of a sense of faith in God Almighty. In addition, the state is obliged to make laws and regulations that prohibit anyone from harassing religious teachings. Freedom of religion is a very important principle in the life of the state and nation, so the meaning and consequences must be understood by both the state and the community. Therefore, the principles of freedom that are currently being breathed out louder should remain within the corridors and context of the laws that apply in Indonesia. Such a position requires all parties to submit to and obey the principles of the rule of law and must uphold the law and government, including carrying out religious teachings properly. This is because religion is a guide for human life in accordance with the mandate of the UUD 1945.

The provision of Article 29 is very clear that the Indonesia must have a religion for its adherents. Generally, Religion means a tradition, so when viewed from the origin, the definition of religion is a regulation that can prevent humans from being damaged and direct human behavior to be more orderly and orderly. Humans with the multicultural nature that accompanies them are a unique entity. Reality Human diversity, whether from race, ethnicity, nation, religion, or ideology, is inevitable, cannot be avoided, and must be accepted as an empirical-realistic fact. A mature and wise attitude is an attitude that must always accompany us in facing the reality of a pluralistic society. Islam is one of the social institutions that does not deny the fact that this diversity of society even before getting to know each other, dialogue, interacting, and living a prosperous life

on earth regardless of socio-cultural, gender, and religious conditions, as Allah SWT said:

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَىٰ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

"O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted".

This verse explains that Allah SWT said the purpose of Adam and Eve's creation was to bequeath offspring scattered on this earth. Then Allah SWT spread men and women in large numbers and made them into nations and tribes. Their goal is to form certain ethnic groups or groups to get to know each other. By knowing each other, they can help each other, help each other, and fulfill the rights of their relatives around them. In other words, the continuity of life can run well and not commit crimes.

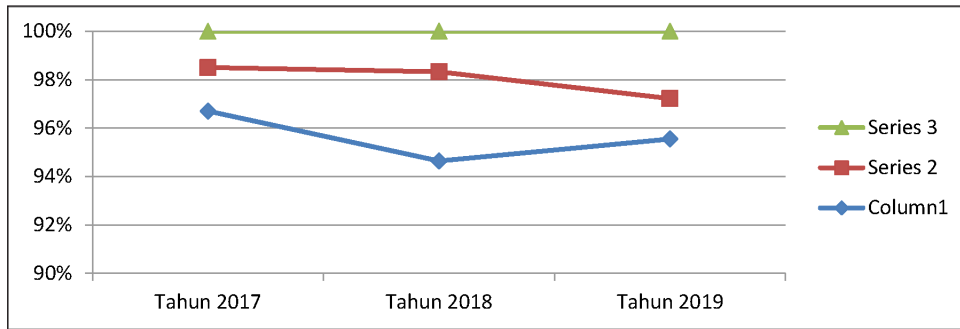
This verse also clearly explains that humans in the eyes of Allah SWT are the same and equal. It is not justified if anyone is demeaning each other. The only thing that can distinguish one human from another is the degree of piety. With piety, the person has already practiced their religion and has not committed any heinous act. Allah SWT forbids all forms of hatred toward fellow humans based on ethnicity, race, or religion as stated in Surah al-Hujurât [49]: 13. The importance of awareness and increasing tolerance for others needs to be realized so that humans do not arbitrarily commit acts of discrimination, racism, or other similar actions. Apart from Islam forbidding it, this action will actually divide the nation and cause chaos.

In Indonesia, crime still occurs a lot. Media information states that the actions in Indonesia can be described as follows:³⁴

³³ Mohammad Fajrul Falaakh, *Pertumbuhan Dan Model Konstitusi Serta Perubahan UUD 1945 Oleh Presiden, DPR, Dan Mahkamah Konstitusi*, (Gadjah Mada University Press, 2014), p. 49.

³⁴ "Badan Pusat Statistik."

Table 1. Crime rate in 2020



The diagram above is a general description that in Indonesia, the crime rate at the latest statistical data source is around 1.1%, meaning that the crime rate is, of course, still there, although basically, crime cannot be lost on earth, the most important thing is how the crime rate can be minimized and a peaceful society can be achieved. The Constitution of the 1945 Constitution as a state fundamental norm which has a constitutional function is as the source of the highest legal basis of the state. In general, the formation of the constitution is related to the theory of the formation of the state. Various theories of state formation, such as the theocracy theory, power theory, community agreement theory, or other theories, basically affect how the constitution is drawn up. It is said to be the highest law because the constitution as a state fundamental norm means that all rules must not conflict with the UUD 1945.³⁵ With the chapter on religion, it is very clear that religion regulates the order of human life, one of which is evil deeds committed by humans.

Evil deeds are blatant violations of norms such as religious and moral norms, as well as decency and legal norms. The birth of article 29 is a point as it is the basic law for Indonesian legal communities to embrace religion, practice religion, and all of these goals cannot be separated in order to avoid or minimize crime in Indonesia. Article 29 of the 1945 Constitution as the basic law that forms the basis for the laws under it, as contained in the hierarchy of laws and regulations in Law No. 12 of 2011 concerning the formation of laws and regulations, is contained in Article 7. The 1945

Constitution is a state fundamental norm, meaning that all laws under it must not conflict with the 1945 Constitution. If viewed from the *maqâshid al-syarî'ah* concept, of course, the UUD 1945 in article 29 is in line with the *maqâshid al-syarî'ah* concept, which aims for human happiness in the world and in the hereafter.

Conclusion

Maqâshid al-syarî'ah is a relevant concept to the objectives of Islamic law; to protect mankind. This is a concept that governs various aspects in (1) overcoming evil and (2) maintaining peace throughout the world. This concept creates the general principle that "where there is public interest, there is God's law." The purpose of Islamic law can be detected by its spirit in realizing benefit and eliminating harm or crime. The UUD 1945 is the highest legal basis in Indonesia that must be obeyed by all citizens. In this constitution, there is a chapter that specifically regulates religious provisions, as stated in article 29. This article is the basic rule for the Indonesian legal community to practice religious teachings. For this reason, the Indonesian population, which is Muslim majority, has the opportunity to apply *maqâshid al-syarî'ah* in statutory materials such as the Criminal Code. With this approach, crime and tyranny are expected to be prevented or minimized as well as possible.

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³⁵ Heni Siswanto, "Memaksimalkan Prolegnas Dan Prolegda Dalam Politik Hukum Nasional (Politik Hukum Penanggulangan Kejahatan Perdagangan Orang Di Era Globalisasi)," *Fiat Justisia: Jurnal Ilmu Hukum*, vol, 5, no. 2 (2011).

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