

THE SEXUAL VIOLENCE CRIMINAL LAW (TPKS LAW) IN PRESERVING THE FAMILY IN THE MAQASID SHARIA PERSPECTIVE

Suwarjin

State Islamic University Fatmawati Sukarno, Bengkulu, Indonesia

siajina@yahoo.com

Aadil Ahmad Shairgojri

PhD Svholarships, India

aadilhasan1995@gmail.com

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Abstract: This study aims to unveil the manifestations of sexual violence in Bengkulu and subsequently elucidate the significance of the *Sexual Violence Law* in safeguarding families through the lens of *Maqasid Sharia*. Employing a qualitative library research methodology with a normative-conceptual approach, the investigation reveals two main findings. First, the ratification of the *Sexual Violence Law* signifies a legal stride to address and protect victims, filling a void in specific legislative provisions. Notably, Bengkulu ranks fourth in sexual violence cases within Sumatra, with perpetrators predominantly known to the victims. However, the region lacks comprehensive psychosocial support, including educational aid, psychological services, reproductive health examinations, and talent development opportunities for child victims. The absence of secure shelters compels social workers to resort to orphanages as an alternative. Second, the urgency of the *Sexual Violence Law*, viewed through the *Maqasid Sharia* perspective, aligns with the *dharuriyat* level, emphasizing the protection of religion (*Hifz al-Diin*), safeguarding the body and soul (*Hifz al-Nafs*), ensuring mental well-being (*Hifz al-'aql*), and protecting offspring (*Hifz al-Nasl*). This study sheds light on the necessity of legal provisions in mitigating sexual violence while emphasizing the broader societal and familial dimensions from a *Maqasid Sharia* standpoint.

Keywords: *Sexual Violence, Family, Maqasid Sharia*

Abstrak: Penelitian ini bertujuan untuk mengungkap bentuk-bentuk kekerasan seksual di Bengkulu dan menjelaskan signifikansi *Undang-Undang Kekerasan Seksual* dalam melindungi keluarga dari sudut pandang *Maqasid Sharia*. Dengan menggunakan metodologi penelitian pustaka kualitatif dengan pendekatan normatif-konseptual, penelitian ini mengungkap dua temuan utama. Pertama, ratifikasi *Undang-Undang Kekerasan Seksual* menandakan langkah hukum untuk menangani dan melindungi korban, mengisi kekosongan dalam ketentuan legislatif khusus. Bengkulu secara mencolok menempati peringkat keempat dalam kasus kekerasan seksual di Sumatra, dengan pelaku yang dominan dikenal oleh korban. Namun, wilayah ini kurang memiliki dukungan psikososial yang komprehensif, termasuk bantuan pendidikan, layanan psikologis, pemeriksaan kesehatan reproduksi, dan peluang pengembangan bakat untuk korban anak. Ketidaktersediaan tempat perlindungan yang aman memaksa pekerja sosial memilih panti asuhan sebagai alternatif. Kedua, urgensi *Undang-Undang Kekerasan Seksual*, dilihat melalui perspektif *Maqasid Sharia*, sejalan dengan tingkat *dharuriyat*, menekankan perlindungan terhadap agama (*Hifz al-Diin*), menjaga tubuh dan jiwa (*Hifz al-Nafs*), memastikan kesejahteraan mental (*Hifz al-'aql*), dan melindungi keturunan (*Hifz al-Nasl*). Penelitian ini memberikan wawasan tentang kebutuhan ketentuan hukum dalam mengatasi kekerasan seksual sambil menekankan dimensi sosial dan keluarga yang lebih luas dari sudut pandang *Maqasid Sharia*.

Kata Kunci: *Kekerasan Seksual, Keluarga, Maqasid Syariah*



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Introduction

Sexual harassment can be experienced by anyone at any time. The Ministry of Women's Empowerment and Child Protection (PPPA) noted that throughout 2021 there was 10,247 violence against women, of which 15.2 per cent were sexual violence.¹ While the victim is always used as the main cause, causing the victim to be increasingly cornered and traumatized.² The number of cases of rape against women reached 597, or 25% of the total cases.³ Cases of rape in marriage (marital rape) occupy the second position, with 591 cases.⁴

Next, namely cases of Incest with a total of 433 cases.⁵ A total of 374 cases were sexual harassment. Cases of sexual intercourse and cyberspace were recorded at 164 cases and 108 cases, respectively. A total of 63 cases were sexual abuse.⁶ There were also 17 cases of sexual slavery, 14 cases of sexual exploitation, and 2 cases of attempted rape.⁷

Meanwhile, in cases of violence against women in 2021, the Women's Crisis Center (WCC) Light noted that there were 64 cases handled in Bengkulu Province.⁸ The cases handled by the WCC itself are in the form of

violence against wives or domestic violence (KDRT), rape, dating violence, attempted rape, sexual harassment and obscenity on Sumatra Island.⁹ Based on the records of the Cahaya Wanita Women Crisis Center (WCC) and the Bengkulu PUPA Foundation, there were 25 cases, with the perpetrators dominated by those closest to them.¹⁰

Based on these data, the forms of sexual violence including rape, including rape in biological families (incest), sexual harassment, sexual exploitation, trafficking accompanied by sexual violence, forced marriages, sodomy, dating violence, forced abortions and online gender-based violence.

Picture 1. the forms of sexual violence



¹ Nursariani Simatupang, 'Kekerasan Seksual Terhadap Anak Dan Pencegahannya', *Seminar Nasional Hukum, Sosial, Dan Ekonomi*, 1.1 (2022).

² Darmini, 'Peran Pemerintah Dalam Pencegahan Kekerasan Seksual Terhadap Anak', *Qawwam: Journal for Gender Mainstreaming*, 15.1 (2021).

³ Muhammad Hasanuddin, 'Implikasi Yuridis Pengaturan Hak Korban Tindak Pidana Kekerasan Seksual Dalam Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual', *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum Dan Keadilan*, Vol.9. Kekerasan Seksual (2022).

⁴ Nurlaila Isima, 'KEBIJAKAN HUKUM PIDANA MARITAL RAPE DALAM KONSEP PEMBAHARUAN HUKUM DI INDONESIA', *Al-Mujtahid: Journal of Islamic Family Law*, 1.2 (2021) <<https://doi.org/10.30984/jifl.v1i2.1783>>.

⁵ Sulastri Sulastri and Any Nurhayaty, 'DINAMIKA PSIKOLOGIS ANAK PEREMPUAN KORBAN KEKERASAN SEKSUAL INCEST: SEBUAH STUDI KASUS', *PSYCHE: Jurnal Psikologi*, 3.1 (2021) <<https://doi.org/10.36269/psyche.v3i1.340>>.

⁶ Rindi Putri Afifah, Nindya Prasetya Wardhani, and Aura Shava Dhinda Salsabila, 'Perlindungan

Hukum Terhadap Hak Anak Incest Berdasarkan Hukum Negara Indonesia', *Jurnal Hukum Lex Generalis*, 2.6 (2021) <<https://doi.org/10.56370/jhlg.v2i6.120>>.

⁷ T S Ahasia, 'URGENSI KRIMINALISASI PERBUDAKAN SEKSUAL DALAM PERSPEKTIF PENGHAPUSAN KEKERASAN SEKSUAL', *Kumpulan Jurnal Mahasiswa Fakultas Hukum*, 2021.

⁸ Inayoh Gumilang and Sri Dwi Fajarini, 'PROSES KONSELING ANTARA KORBAN PELECEHAN SEKSUAL DENGAN KONSELOR DI CAHAYA PEREMPUAN WOMEN CRISIS CENTRE BENGKULU', *J-SIKOM*, 2.1 (2022) <<https://doi.org/10.36085/j-sikom.v2i1.3066>>.

⁹ EKO SRI MULYONO, *Bimbingan Dan Konseling Bagi Remaja Korban Pelecehan Seksual Di Women Crisis Center (Wcc) Kota Bengkulu, Studi, Program Konseling, Bimbingan Dakwah, Jurusan*, 2021.

¹⁰ Eli Rahmidiani, 'PERANAN CAHAYA PEREMPUAN WOMEN'S CRISIS CENTRE (WCC) BENGKULU DALAM MENANGANI KASUS KDRT PERSPEKTIF HUKUM ISLAM DAN UU NO. 23 TAHUN 2004 TENTANG PENGHAPUSAN KDRT', *Nuansa*, 11.2 (2018) <<https://doi.org/10.29300/nuansa.v11i2.1361>>.

Members of the Bengkulu Provincial DPRD said that Bengkulu Province is currently included in the emergency area for sexual violence against children. This is due to the high number of cases of sexual violence against children and incest in Bengkulu.

For example, the incest case that occurred in 2020 carried out by AR (41), a resident of Bengkulu City, was successfully arrested by the Bengkulu Police Criminal Investigation Unit because he was the perpetrator of domestic sexual violence committed by the perpetrator against his biological child. Head of the Criminal Investigation Unit of Bengkulu Police, AKP, explained. Yusiady, the depraved actions committed by the perpetrator against the victim, who was none other than his biological child, was carried out by the perpetrator when the victim was still in elementary school (SD) until the victim was studying at senior high school (SMA). This incident took place when the victim was still in grade 2 of elementary school until the victim was in grade 2 of high school. As for the number of times, the perpetrator did this to the victim, the victim can no longer remember. The victim came to the Bengkulu Regional Police accompanied by her aunt to report the incident after the victim told her aunt what had happened to her.¹¹

In Islam, women have a very special place.¹² Islam greatly glorifies, maintains its dignity and honour, and forbids all forms of violence and oppression, including sexual violence.¹³ Allah dedicated a letter in the

Koran with the name: An-Nisa. Letters generally convey messages to protect and, at the same time, glorify vulnerable people in society, such as orphans and widows and women in general.¹⁴

In QS. An-Nisa verse 19, Islam commands to treat women with dignity.¹⁵

"O you who believe, it is not lawful for you to destroy women by force and do not trouble them because you want to take back some of what you have given them, unless they do a real abomination. and get along with them properly. then if you don't like them, (then be patient) because maybe you don't like something, even though Allah made him a lot of goodness"

After a very long discussion, finally, on April 12, 2022, a law was passed that specifically regulates sexual violence, namely the Law on Crimes against Sexual Violence, after long delays in its ratification for approximately 10 years. This law also provides law enforcement officials (APH) with a legal umbrella that has not existed for every type of sexual violence case. The TPKS Bill is also a manifestation of the state's presence in providing a sense of justice and protection to victims of sexual violence, which so far has been referred to as an iceberg phenomenon.¹⁶

The emergency of sexual violence currently occurring cannot only be interpreted by the increasing and extreme

¹¹ Muslim Chaniago and others, 'Juridical Study on the Settlement of Child Cases as Victims of Sexual Violence Perspective of Law 35 of 2014 Concerning Child Protection in Bengkulu City', *JURNAL HUKUM SEHASEN*, 7.2 (2022) <<https://doi.org/10.37676/jhs.v7i2.2228>>.

¹² Nur Ikhlas, 'Reposisi Perempuan Islam Dalam Bingkai Historiografi', *Ishlah: Jurnal Ilmu Ushuluddin, Adab Dan Dakwah*, 1.1 (2020) <<https://doi.org/10.32939/ishlah.v1i1.27>>.

¹³ Fauziah Hayati, 'Hak Asasi Perempuan Dalam Hukum Islam', *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan*, 16.3 (2022) <<https://doi.org/10.35931/aq.v16i3.1026>>.

¹⁴ Asep Saepullah, 'FEMINITAS DAN DEKONSTRUKSI PEREMPUAN DALAM ISLAM: STUDI KASUS PEMIKIRAN NASR HAMID ABU ZAYD', *TAJDID: Jurnal Ilmu Ushuluddin*, 19.1 (2021) <<https://doi.org/10.30631/tjd.v19i1.113>>.

¹⁵ Farkhan Muhammad, 'Konsep Mu'āsyarah Bil Ma'rūf Perspektif Al-Qur'an Surat An-Nisa' Ayat 19', *Al-Inṣāf - Journal Program Studi Ahwal Al Syakhshiyah*, 1.2 (2022).

¹⁶ Paulina Anida, Falarasika and Maria Madalina, 'Urgensi Ruu Tpkas Sebagai Payung Hukum Bagi Korban Kekerasan Seksual Beserta Tantangan-Tantangan Dalam Proses Pengesahannya', *Jurnal Demokrasi Dan Ketahanan Nasional* |, 1.1 (2022).

number of cases of sexual violence, but rather the failure in handling the cases that occur, which makes victims feel more beaten, helpless, and lose their sense of security.¹⁷ Morally, society acts as a passive community because it is not directly involved with events. However, this does not mean that their contributions end. The community must transform into a supportive community ready to provide assistance and a safe space for victims. We cannot just stay silent and close our eyes to what is happening around us.¹⁸

This Law on Sexual Violence certainly has an important role in overcoming the emergency of sexual violence in Indonesia. It is hoped that the Law on Crime of Sexual Violence can protect all parties, especially families, from sexual violence. From the point of view of the objective.

Islam itself strictly prohibits acts of sexual violence. This is evident in the prohibition of committing adultery in Islam. Adultery is prohibited because it can damage the status of offspring. Islamic law itself has a standard of benefit values which is used as a benchmark for the suitability of human actions with Islamic values. This standard is included in the 5 objectives of Islamic law, often called *maqashid sharia*.

From this, at first glance, it seems that there is a compatibility between the mission of the law on sexual violence and the values of benefit in *maqashid sharia*. For this reason, the researcher considers it important to examine the urgency of this law on the crime of sexual violence using the *maqashid* approach.

The novelty of this research can be seen in the absence of research that examines the

criminal act of sexual violence from the perspective of *maqashid Sharia*. Previous research only examined the legalization polemic,¹⁹ its effectiveness,²⁰ and its urgency as a legal umbrella for victims of sexual violence.²¹

Literature Review

Maqashid Al-Shari'ah as Wisdom and Illat For the Establishment of a Law

The purpose of establishing law is known as *maqashid al-shari'ah*, one of the important concepts in studying Islamic law.²² Because of the importance of *maqashid al-shari'ah*, legal theorists make *maqashid al-shari'ah* something that must be understood by *mujtahid* who perform *ijtihad*. The author conducted literature research to explore the definitions and opinions of scholars regarding *maqashid al-sharia*. The conclusion is that *maqashid al-shari'ah* is wisdom, and the *illat* to determine law.²³ In the study of *ushul fiqh*, wisdom is different from *illat*. *Illat* is a certain characteristic that is clear and can be known objectively (*zahir*) and has a benchmark (*mundhabit*), and is by legal provisions (*munasib*) whose existence determines the existence of law. The difference between the scholars in defining *maqashid al sharia* is the dynamics of *ijtihad* from time to time which is the breadth of Islamic *sharia*.²⁴

Maqashid Sharia of Imam Syathibi

According to al-Syatibi, as quoted from his expression: "Surely the Shari'a aims to realize the benefit of humans in this world

¹⁷ Simatupang.

¹⁸ Muhammad Tri Ajie and Romanti Romanti, 'Mendikbudristek: Ada Darurat Kekerasan Seksual Di Lingkungan Perguruan Tinggi!', *Kementerian Pendidikan, Kebudayaan, Riset, Dan Teknologi*, 2021.

¹⁹ Ratu Sri, Andi Aryani, 'Analisis Polemik Pengesahan RUU Tindak Pidana Kekerasan Seksual (TPKS)', *Najwa: Jurnal Muslimah Dan Studi Gender*, 1.1 (2021).

²⁰ Nadhila Cahya Nurmalasari, *EFEKTIVITAS UNDANG-UNDANG TINDAK PIDANA KEKERASAN*

SEKSUAL DI INDONESIA, Jurnal Demokrasi Dan Ketahanan Nasional |, 2022, 1.

²¹ Anida, Falarasika and Madalina.

²² Muhammad Syukri Albani Nasution and Rahmat Hidayat Nasution, 'Filsafat Hukum & Maqashid Syariah', 2020, 300.

²³ Paryadi, 'Maqashid Syariah: Definisi Dan Pendapat Para Ulama', *Cross-Border*, 4.2 (2021).

²⁴ Luqman Rico Khashogi, 'Menakar Rekonstruksi Maqashid Syariah Telaah Genealogis Pendekatan System Jasser Auda', *POLITEA: Jurnal Politik Islam*, 5.1 (2022).

and in the hereafter".²⁵ Based on al-Syatibi's statement, the content of maqasid sharia or the purpose of the law is the benefit of humankind.²⁶ All obligations (taklif) are created to realize the servant's benefit. So, the content of maqasid sharia is the benefit.²⁷ That *maslahah*, through maqasid al-shariah analysis, is not only seen in a merely technical sense but in the dynamics and development of law as something that contains philosophical values from the laws ordained by God for humans.²⁸

Distribution of Maqasid Sharia According to Imam Syathibi

In terms of substance, maqasid Sharia is beneficial. Al-Syatibi sees the benefit from two perspectives, namely:

1. Maqasid al-Syari'(God's Purpose)
2. Maqasid al-Mukallaf (Purpose of Mukallaf).²⁹

Maqasid Sharia contains four aspects, namely:

1. The initial goal of the Shari'a is the benefit of humankind in this world and the hereafter.
2. Sharia is something that must be understood.
3. Shari'a as a taklif law that must be carried out, and
4. The Shari'a aims to bring people under the auspices of the law³⁰

The first aspect relates to the content

and nature of maqasid sharia. The second aspect relates to the language dimension so that the Shari'a can be understood to achieve the benefits it contains. The third aspect relates to implementing the provisions of the Shari'a to realize the benefit. It also relates to the human ability to carry it out. The fourth aspect relates to human obedience as a *mulatto* under and against God's laws.³¹

Maslahah can be realized if the five main elements can be realized and maintained. The five main elements, said al-Syatibi, are *al-din* (religion), *al-nafs* (soul), *al-aql* (intellect), *al-nasl* (lineage) and *al-mal* (wealth).³² To realize and maintain the five basic elements, al-Syatibi divides into three levels of maqasid or sharia objectives, namely:

1. Maqasid al-Dharuriyat
2. Maqasid al-Hajiyat
3. Maqasid al-Tahsiniyat.³³

Maqasid al-Dharuriyat is intended to maintain the five main elements of human life above. Maqasid al-Hajiyat is intended to eliminate the sultanate or make the caretakers of the five basic elements even better. Meanwhile, Maqasid al-Tahsiniyat is intended so that humans can do their best to improve the maintenance of the five basic elements.³⁴

The non-realization of the *daruriyat* aspects can damage human life in this world and the hereafter. Ignoring the *hajiyat* aspect does not destroy the existence of the five

²⁵ Agung Kurniawan and Hamsah Hudafi, 'Konsep Maqashid Syariah Imam Asy-Syatibi Dalam Kitab Al-Muwafaqat', *Al-Mabsut: Jurnal Studi Islam Dan Sosial*, 15.1 (2021), 29–38 <<https://doi.org/10.56997/ALMABSUT.V15I1.502>>.

²⁶ Ahmad Rajafi, 'QISHASH DAN MAQASHID AL-SYARIAH (Analisis Pemikiran Asy-Syathibi Dalam Kitab Al-Muwafaqat)', *Jurnal Ilmiah Al-Syir'ah*, 8.2 (2010) <<https://doi.org/10.30984/as.v8i2.20>>.

²⁷ Nirwan Nazaruddin and Farhan Kamilullah, 'MAQASHID AS-SYARIAH TERHADAP HUKUM ISLAM MENURUT IMAM AS-SYATIBI DALAM AL-MUWAFQAT', *Jurnal Asy-Syukriyyah*, 21.1 (2020) <<https://doi.org/10.36769/asy.v21i1.101>>.

²⁸ Suyitno, 'Maqhasid As-Syariah Dan Qishas: Pemikiran As-Syatibi Dalam Kitab Al-Muwafaqat', *Muaddib*, 05.01 (2015).

²⁹ Abdurrahman Kasdi, *MAQASYID SYARI'AH PERSPEKTIF PEMIKIRAN IMAM SYATIBI DALAM KITAB AL-MUWAFQAT*, *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam*, 2016, v.

³⁰ Nazaruddin and Kamilullah.

³¹ Moh Toriquddin, 'Teori Maqashid Syari'ah Perspektif Al-Syatibi', *Jurnal Syariah Dan Hukum*, 6.1 (2014).

³² Moh Toriquddin, 'Teori Maqâshid Syarî ' Ah Perspektif', *De Jure, Jurnal Syariah Dan Hukum*, 6.1 (2010).

³³ Muchamad Coirun Nizar, 'Literatur Kajian Maqashid Syari'ah', *Jurnal Ulul Albab*, 35, 2016.

³⁴ Kurdi Fadal, 'Hermeneutika Hukum Islam Abu Ishaq Al-Syathibi', *Al-Ulum*, 10.2 (2010).

basic elements but only leads to the sultanate for humans as converts in realizing it. While neglecting aspects.³⁵ Tahsiniyat carrying out efforts to maintain the five basic imperfect elements.³⁶ For example, in maintaining religious elements, the daruriya aspects include establishing prayers. Prayer is an aspect of daruriyat, the obligation to face the Qibla is an aspect of hajiyat, and covering the genitals is an aspect of tahsiniyat.³⁷

Method

The type of research used is normative legal research.³⁸ Normative legal research is legal research that focuses on principles or principles in the sense that law is conceptualized as norms or rules originating from statutory regulations,³⁹ court decisions, as well as the doctrines of leading legal experts.⁴⁰ This research is called library research because the data and materials come from books, encyclopedias, dictionaries, journals, documents, magazines, articles, etc.⁴¹

Soerjono Soekanto and Sri Mamuji interpret "normative legal research or also called library law research is legal research conducted by examining library materials or mere secondary data".⁴²

The approach used by the author is conceptual. Marzuki explained, "a conceptual approach is carried out when researchers do not move from existing legal rules. This was done because there was no legal regulation for the problem."⁴³

The data source is primary legal material in the form of legal material that has authority. The legal material consists of statutory regulations, official records or treatises in making a statutory regulation, judge's decisions, etc.⁴⁴ Some references used as primary literature sources include the Draft Law on the Crime of Sexual Violence, articles and news about various types of sexual violence, especially incestuous sexual violence, and the maqasid sharia by al-Syatibi.

³⁵ Achmad Kadarisman, Tutik Hamidah, and Hamidah, 'PEMBATASAN USIA PERKAWINAN DALAM SUDUT PANDANG MAQASHID SYARI' AH AL SYATHIBI', *CENDEKIA: Jurnal Studi Keislaman*, 7.1 (2021).

³⁶ S Rohmah, 'The Pattern of Absorption of Islamic Law Into National Law: Study of The Halal Product Guarantee Law in The Perspective of Maqashid Shari'ah', *Jurisdictie*, 2021.

³⁷ Zaidan Anshari, 'KONSEP BID'AH HASANAH (Perpektif Maqashid Al-Syathibi Dan Ibnu 'Asyur)', *Jurnal Ilmiah Ilmu Ushuluddin*, 17.1 (2018) <<https://doi.org/10.18592/jiu.v17i1.1989>>.

³⁸ Kurtubi, 'View of Child Playing Online Game in the Sadd Al-Zari'ah's Perspective', 2022 <<https://juna.nusantarajournal.com/index.php/juna/article/view/16/7>> [accessed 16 December 2022].

³⁹ Vincentius Setyawan, 'Pancasila As A Philosophical Basis Of Law Formation In Indonesia', *NUSANTARA: Journal Of Law Studies*, 2.1 (2023), 1-8 <<https://juna.nusantarajournal.com/index.php/juna/article/view/29>>.

⁴⁰ Musda Asmara and Lilis Sahara, 'Problems with Choosing a Mate in Islam for People Who Choose a Mate through Social Media', *NUSANTARA: Journal Of Law Studies*, 1.1 SE-Articles (2022), 40-49

<<https://juna.nusantarajournal.com/index.php/juna/article/view/12>>.

⁴¹ Dwi Astuti Wahyu Nurhayati and Novi Tri Oktavia, 'Relevance Of Al Mawardi's Reflection In The Development Of Islamic Economic Activities', *Journal of Nusantara Economy*, 1.1 SE-Articles (2022), 48-58 <<https://juna.nusantarajournal.com/index.php/nuna/article/view/24>>.

⁴² Maulana Iqbalwa, 'Practice Brokerage Services for the Sale and Purchase of Coffee from the Perspective of Syari'ah Economics', *NUSANTARA: Journal Of Law Studies*, 1.1 SE-Articles (2022), 65-76 <<https://juna.nusantarajournal.com/index.php/juna/article/view/15>>.

⁴³ Amandeep S. Gill and Stefan Germann, 'Conceptual and Normative Approaches to AI Governance for a Global Digital Ecosystem Supportive of the UN Sustainable Development Goals (SDGs)', *AI and Ethics*, 2.2 (2022) <<https://doi.org/10.1007/s43681-021-00058-z>>.

⁴⁴ Faiz Zainuddin and Imam Syafi'i, 'Environmental Jurisprudence; Environmental Preservation Efforts In Islam', *NUSANTARA: Journal Of Law Studies*, 2.1 SE-Articles (2023), 23-30 <<https://juna.nusantarajournal.com/index.php/juna/article/view/31>>.

Result and Discussion

Incest Sexual Violence in Bengkulu

Until the end of 2021 in Bengkulu Province, there are still rampant cases of immorality and cases of violence against women and children. From the data from Cahaya Perempuan Women Crisis Center (WCC) Bengkulu Province until November 2021, there have been 2,218 cases of violence against women and children in Bengkulu Province. Namely, the types of cases include violence against wives (kti), incest, sexual harassment, attempted sexual abuse, sexual abuse, attempted rape, rape, dating violence, trafficking/trafficking in persons, sodomy and violence against children. In the counselling process by CPWCC, 1 victim of violence experiences 2-3 forms of violence simultaneously, especially if the victim experiences sexual violence. The victim must also experience physical and psychological violence.⁴⁵

The head of the Bengkulu City women's empowerment, child protection and population control (Dinas P3AP2KB) office, Dewi Dharma, said that her party is currently preparing a safe house for victims of violence for women and children at the UPT for the Protection of Women and Children in Bengkulu city.⁴⁶

According to Dewi, many victims have been unable to return to their homes due to various threats, such as terror, fear and the victim's safety. In addition, the victim also needs mental and physical recovery, which may be difficult to obtain if the victim is still in a state of fear. He admitted that the city of Bengkulu has shelters, but shelters are more aimed at neglected children with social problems.⁴⁷

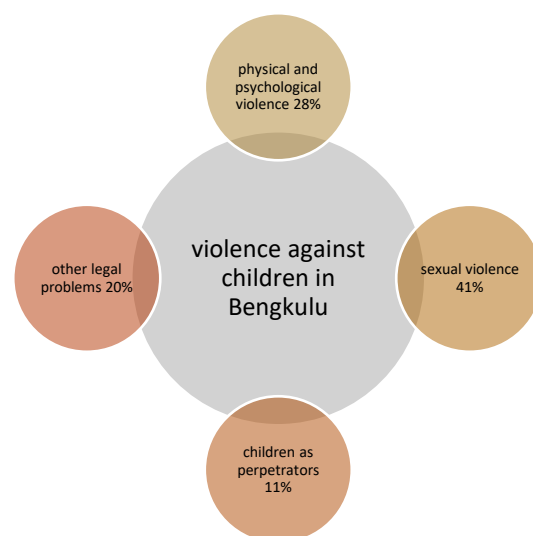
On July 23, 2022, in commemoration of National Children's Day, the Social Rehabilitation Assistant for children of the Ministry of Social Affairs and the Indonesian Independent Professional Social Worker (IPSPI) of Bengkulu Province provided

protection services for troubled children, including victims of violence without discrimination at LKSA (Children Social Welfare Institutions/Orphanages) Bintang Skilled City of Bengkulu.

Social Rehabilitation Coordinator of the Bengkulu Province Ministry of Social Affairs Agung Prandana Iskandar M.Kom conveyed the development of cases in 2022 in Bengkulu Province until July, the number of violence against children reached 168 cases, this case occurred in every City and Regency.

Cases of violence against children include physical and psychological violence 28%, sexual violence 41%, children as perpetrators 11% and other legal problems 20%. Assistance for children in conflict with the law, especially sexual violence, focuses on legal assistance, while election support for child victims of sexual violence after the legal process is still neglected.

Picture 2. Cases of violence against children in Bengkulu



Bengkulu City Child Social Rehabilitation Assistant Hilda Sriwanty explained that there was no support for sustainable psychosocial recovery in the form of educational support, psychological services, reproductive health examination and care services, and support

⁴⁵ Ferawati Royani, 'Universitas Dehasen Bengkulu Multi Etnik , Dimana Keberadaan Suku Bangsa Golongan Kaya Dan Golongan Miskin Yang', *Al-Imarah*, 6.32 (2021).

⁴⁶ Chaniago and others.

⁴⁷ Sulastri and Nurhayaty.

for potential and talent development for child victims. So that it has an impact on children's social functioning, such as children becoming depressed, withdrawing from the social environment, not wanting to continue their education and even negative behaviour changes.

Table 2. the impact of the lack of support for sustainable psychosocial recovery for child victims of sexual violence

No.	needed psychosocial recovery support	Due to the absence of psychosocial recovery support
1	Educational services	Dropped out of education
2	psychological services	Depression
3	reproduction health	Withdraw from social circles
4	potential and talent development	Negative behavior changes

In commemoration of National Children's Day 2022, Social Rehabilitation Assistants of the Ministry of Social Affairs collaborated with DPD IPSPI to appreciate LKSA (Child Welfare Institution/Orphanage) Skilled Stars of Bengkulu City in providing protection services for children with social problems, including victims of violence without discrimination.

Some of the Incest Cases Published in Bengkulu

First, in 2020, AR (41), a resident of Bengkulu City, was arrested by the Bengkulu Police Criminal Investigation Unit because he was the perpetrator of domestic sexual violence committed by the perpetrator against his biological child. Head of the Criminal Investigation Unit of Bengkulu Police, AKP, explained. Yusiady, the lascivious act committed by the perpetrator against the victim, who was none other than his biological child, was carried out by the perpetrator since the victim was still in elementary school (SD) until the victim was studying at senior high school (SMA). This incident took place when the victim was still in grade 2 of elementary school until the

victim was in grade 2 of high school. As for the number of times, the perpetrator did this to the victim, the victim can no longer remember. The victim came to the Bengkulu Regional Police accompanied by her aunt to report the incident after the victim told her aunt what happened to her.

Second, in February 2021, the Women and Children Protection Unit of the Lebong Police arrested a man with the initials RG (45 years) from Semelako I Village, Central Lebong District, for reports of sexual abuse. The victims were two sisters who were none other than their nieces. Apart from being related to relatives, uncles and nieces, two women who were victims of RG also have mental disabilities (autism). What's worse, RG, who has been named a suspect, has repeatedly committed lascivious acts against older victims or their older siblings. Meanwhile, his sister was recognized as the perpetrator only once.

Third, in 2022 the North Bengkulu Police arrested a farmer with the initials KHP (41) who had intercourse with his 16-year-old biological child until he was 7 months pregnant. KHP was arrested by the police while on the run in Musi Rawas Regency, South Sumatra Province, on May 17 2022. The perpetrator was arrested based on a report from the family to the Pasang Jaya Police. The perpetrator was the victim's biological father, who had intercourse with the victim from May 2021 to October 2021. The perpetrator carried out his actions by threatening the victim to leave the victim if he did not serve his immoral desires. So far, the victim has lived with her stepmother and biological father, alias the perpetrator, while her biological mother has become an Indonesian Migrant Worker (TKI). The victim is known to be pregnant by the victim's stepmother, the perpetrator's wife. The stepmother was suspicious of the change in the shape of the victim's stomach and body. When questioned, the victim admitted that she was 7 months pregnant because the perpetrator had repeated intercourse with her.

So, cases of incest and other sexual violence in Bengkulu are still high. Even after

the passing of the TPKS Law, which specifically provides full guarantees to victims, it has not yet given a deterrent effect to perpetrators. Most victims also do not dare to report the violence they experience directly. This is because the victim is under threat from the perpetrator. After a long time has passed, the victim dares to tell her about the violence she experienced or the suspicions of other people.

However, in the fulfilment of rights as mandated by the TPKS Law for victims, in Bengkulu, there is no support for sustainable psychosocial recovery in the form of educational support, support for psychological services, reproductive health examination and care services, support for potential and talent development for child victims.

It is also difficult for social workers in Bengkulu to find safe houses or homes to accommodate child victims of sexual violence who do not receive support from their families. So the orphanage is a choice.

This shows that the government's efforts to provide recovery places for victims of violence are still minimal. The TPKS Law has been in force for four months since it was ratified on April 12 2022. This is a big homework for the government to work together to carry out the mandate of the TPKS Law regarding the rights that victims of sexual violence must obtain and to establish safe houses as places for victim rehabilitation immediately

The Law on the Crime of Sexual Violence in Protecting the Family from the Maqasid Syariah Perspective

Of the many cases of sexual violence that occurred, only a few were revealed. That's because many victims of sexual violence do not dare to report it. The imbalance in power relations between men

and women and negative stereotypes from society makes victims prefer to remain silent. As the theory that the author has explained in the previous discussion that maqasid sharia aims to benefit humans (maslahah al-ibad).⁴⁸ Based on the cases of sexual violence in Indonesia, they fulfill the elements of 'Maqasid al-Dharuriyat'. Maqasid dlaruriyat, mistakes that must be realized in human life to achieve happiness in the world and the hereafter. The easiest standard to determine this benefit is the consequences it causes. If a benefit without its existence will destroy the world's life and the hereafter, this is called dlaruriyat.⁴⁹

1. Protection of religion (Hifz al-Diin)

To maintain the existence of the true religion of Allah on this earth, in addition to using an effective approach while upholding ethics and intellectual honesty, it is also necessary to adapt it to the conditions of the people with whom we interact. Because an effective method will not have a positive impact if its application is not to the circumstances and conditions of the community.

Therefore the most efficient step in realizing the existence of religion is starting from self-improvement in totality, organizing life within the scope of the family, and then developing invitations towards welfare to the general public. In this case, the TPKS Law regulates efforts to prevent violence by educating families about religious aspects as referred to in article 86 letter a.⁵⁰ Then the state is also present in preventing violence through various fields, one of which is the field of religion as referred to in article 79 paragraph 2.

2. Protection of body and soul (Hifz al-Nafs)

In this aspect, religion orders avoiding

⁴⁸ Abdurrahman Kasdi, 'Maqasyid Syari'ah Perspektif Pemikiran Imam Syatibi Dalam Kitab Al-Muwafaqat', *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam*, 5.1 (2016) <<https://doi.org/10.21043/YUDISIA.V5I1.693>>.

⁴⁹ Kasdi, v.

⁵⁰ Dewi Aida, 'PERLINDUNGAN HUKUM DAN HAK ASASI MANUSIA DALAM PERSPEKTIF UNDANG-UNDANG TINDAK PIDANA KEKERASAN SEKSUAL', *Juris Humanity: Jurnal Riset Dan Kajian Hukum Hak Asasi Manusia*, 1.1 (2022).

harm that affects oneself and threatens life. In this case, Islam strives for an effort to create life and an effort to maintain life.⁵¹ In terms of realizing life, Islam prescribes marriage. In terms of maintaining life, Islam offers many efforts, namely.

- a. Obliging all humankind to maintain survival

One of the effects of sexual violence is that the victim will be psychologically disturbed, her health and reproductive function will be disturbed, and her safety will be threatened. In this case, the state provides victims' rights in the form of the right to treatment, protection and recovery as referred to in articles 86-70 of the TPKS Law.

- b. Obliging each region to appoint someone who can maintain the security of its citizens

In this case, the state provides for the Implementation of Integrated Services for the Protection of Women and Children at the Central and Regional Governments (Articles 72-77 of the TPKS Law), and there are efforts for Prevention, Coordination and Monitoring (Articles 79-84 of the TPKS Law).

- c. Maintain human honour by prohibiting all forms of action that can hurt others.

In this case, the state prohibits all forms of violence, both physical and non-physical, and those who violate it will be punished as regulated in articles 5-13 of the TPKS Law.

3. Protection against reason (Hifz al-Aql)

Islam places man before his mind, showing the position of reason in his religion so that he knows that reason is a noble gift. Humans must guard and not pollute the mind with bad things. And when his mind is crippled by madness, all his charity calculations are removed, and there is no burden, punishment, or punishment for him.⁵²

In this case, the state provides recovery services in the form of rehabilitation for both perpetrators and victims. This is intended so

that the perpetrators are deterrents and do not repeat their actions in the future, as referred to in Article 17. As for victims, as an effort to recover from post-violence trauma by providing medical, mental and social rehabilitation (article 70).

Based on the description above, *maslahah* in the study of *maqasid sharia* can be used as a perspective in forming the legislation. So from this point of view, Islam has existed to eliminate various forms of crime, including sexual violence committed by anyone to anyone. The long journey of the TPKS Law resulted in a legal vacuum in handling cases of sexual violence, causing harm to the victims.

The passing of the TPKS Law is good news for victims who have long voiced their rights to protection. From an Islamic point of view, the ratification of the TPKS Law is by the aim of *maqasid sharia*, namely to bring benefit/benefit to humans. Protection of victims of violence, especially women and children, is the duty of the entire state, be it the government, the community or the family.

4. Protection of offspring (Hifz al-Nasl)

Lineage is the foundation of kinship in the family and the support that connects its members. Islam pays great attention to protecting lineage from anything that causes mixing or humiliates the glory of lineage. In this case, Islam forbids immoral acts, including adultery and homosexuality, as well as all actions that can eliminate self-esteem.⁵³ In the TPKS Law, there are 9 types of sexual violence that damage honour (article 4 paragraph 1) and other acts of sexual violence as referred to in this TPKS Law (article 4 paragraph 2).

To prevent this from happening, Islam gives a mandate to the family so that it can protect, guide and educate family members and maintain harmony between family members, as referred to in Article 86.

⁵¹ Toriquddin, 'Teori Maqashid Syari'ah Perspektif Al-Syatibi'.

⁵² Fadal.

⁵³ Muhammad Syukri Albani Nasution and Rahmat Hidayat Nasution, *FILSAFAT HUKUM ISLAM &*

MAQASHID SYARIAH Edisi Pertama, FILSAFAT HUKUM ISLAM & MAQASHID SYARIAH Edisi Pertama, 2020.

TPKS Act. Therefore the most efficient step in realizing the existence of religion is to start from self-improvement in totality, organize life within the scope of the family, and then develop invitations towards prosperity to the general public.

Table 2. Substance of Maqashid Syariah in the Law on Sexual Violence

No.	Maqashid Syariah	The Sexual Violence Criminal Law
1	Hifz al-Din	- Article 86 letter a. And article 79 verse 2: Religious Education for the prevention of sexual violence
2	Hifz al-Nafs	- Articles 86-70: provide victims' rights in the form of rights to treatment, protection and recovery - Articles 72-77: Implementation of Integrated Services for the Protection of Women and Children at the Central and Regional Governments - Articles 79-84: Prevention, Coordination and Monitoring Efforts - Articles 5-13: the state prohibits all forms of violence, both physical and non-physical
3	Hifz al-Aql	- Article 70: medical, mental and social rehabilitation
4	Hifz al-Nasl	- Article 86: maintaining harmony among family members
5	Hifz al-Mal	-

Conclusion

Throughout 2020 Bengkulu Province is known to rank for the 4th highest number of sexual Violence on the island of Sumatra, and the perpetrators are dominated by people closest to them. Until the end of 2021, sexual Violence in Bengkulu is still rife with types of cases, including Violence against wives (kti), incest, sexual harassment, attempted obscenity, molestation, attempted rape, rape, Violence in dating, trafficking/trafficking in persons, sodomy and Violence against a child. In Bengkulu, there is no support for sustainable psychosocial recovery in the form of educational support, psychological services,

reproductive health examination and care services, and support for potential and talent development for child victims. The unavailability of safe houses for victims of Violence has forced social workers to choose orphanages as an alternative.

The urgency of the Law on Sexual Violence in protecting the family from the maqasid sharia perspective is at the dharuriyat level, namely the primary needs of society that must be fulfilled so that they bring benefits in life. If it is not fulfilled, more harm will be caused; acts of sexual Violence will become more rampant. So, in this case, the urgency of the TPKS Law from a maqasid sharia perspective aims to protect religion (Hifz al-Diin), protect the body and soul (Hifz al-Nafs), protect the mind (Hifz al-Aql) and protect offspring (Hifzu an-Nasl).

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