

# LEGAL PROTECTION OF WIVES VICTIMS OF DOMESTIC VIOLENCE PERSPECTIVE OF MAQOSYD SYARIAH

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**Abstrak:** Legal protection of wives and children in the household is very important both physically and psychologically. This domestic violence often occurs even the most dominant trigger for the collapse of household mahligai is violence experienced by wives and even children including victims. The most important issue to be discussed in this study is how the forms of legal protection for wives and children victims of psychological violence in the perspective of maqasid al-sharia. The method used in this research is with a normative juridical approach, namely by conducting research based on books of jurisprudence, legal / reference materials by examining theories and concepts of statutory materials related to this research. To process and analyze data obtained from library materials, descriptive-analytical analysis techniques are used. This analysis technique gives an idea of the logical flow of data analysis. As a result of the study revealed that the forms of protection for wives' and children victims of psychological violence in the household are protection of the provision of mental birth, protection of the fulfillment of their rights in the form of good treatment and the right to obtain useful knowledge. In addition, protection against physical, psychic, and sexual violence. In the view of maqasid al-Shari'ah, the form of protection for the wife is categorized as the maintenance of reason, soul and offspring as a manifestation of al-maqasid al-Shari'ah at the level of dharuriya.

**Keywords:** Legal Protection, Violence, Wife, Maqosyd Syariah

## Introduction

Islam as a religion, provides the foundation of its teachings with a message of peace and goodness. Similarly in the dimension of family law. Talking about family law, it cannot be separated from the issue of marriage law, because the family is formed through marriage. After marriage, a legal relationship is formed between the wife and husband, including relationships related to property in marriage. Furthermore, if from the marriage a child is born, then a relationship is also formed between parents and children / children. (Erwinsyahbana, 2012)

The legal bond in the household, which involves husband and wife having the same obligation to love each other, respect, respect, be faithful, and give inner birth assistance to one another. But sometimes problems arise in family relationships that cannot be avoided. The problems faced are always actual and dynamic because the situation and conditions of each family are

always different. Many problems born from domestic life today lead to acts of violence (Letter, 1985)

The family is the smallest community consisting of the *nucleus* family and the extended family. In this family consists of mother, father and children. In this family, each individual has marital relations and blood relations. Have needs and each cannot be separated from each other. The purpose and purpose of the marriage contract is to form a life of love and love for each other. The purpose of marriage is to realize the household. As for the purpose of realizing a *sakinah* family characterized by virtue... The achievement of this goal depends on the close relationship between the two husband and wife and the good association between the two. There will be a close relationship between the two if each husband and wife continue to carry out their obligations as a good husband and wife. The Prophet said from Abu Hurayrah. He said, "The Prophet (peace be upon him) has taught a lesson. He said, "The perfect believer of faith is the best of his person. And the best person is the one who is the kindest to his wife. (Narrations of Ahmad and Tarmizi).. In accordance with the purpose of marriage which is to form a happy home, peace is born inside, according to the words of the Prophet "My house is my paradise". This is in line with Allah's word in Surah An-Nahl verse 80 "Allah made your houses your dwelling place. From this marriage arise the rights and obligations of husband and wife, including: (Nurzannah, Akrim, & Daulay, 2017) (Sudarson, 2001) (Rasyid, 2013)

- a. Husband and wife are obliged to uphold a household that is *sakinah*, *mawaddah* and *warahmah*.
- b. Husband and wife are obliged to love each other, respect each other, be faithful, and give each other birth and inner help
- c. Husbands and wives are obligated to nurture and nurture their children, regarding their physical, spiritual, intellectual, and religious upbringing.
- d. The husband and wife are obliged to maintain their honor.
- e. Husband and wife must have a permanent residence determined jointly (Articles 30-34 of the Law jo 37-84 of the KHI)

Domestic violence is very common and the victims are generally wives and children. One of the highest causes of divorce is physical and psychological abuse. The violence can be committed by the husband to the wife, or vice versa, but the most dominant is the act of violence committed by the husband against the wife. The forms of domestic violence in Article 5 of the Law on Domestic Violence include: Physical violence; Psychic violence; Sexual violence; or Domestic neglect.

Violence against women, especially in the domestic sphere and more specifically against wives is a form of crime against humanity. The increase in such acts of violence in Indonesia has encouraged various groups to overcome it in various applicable laws and regulations (Samsidar, 217)

Domestic violence is explained in Article 1 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT), that domestic violence is any act against someone, especially women, which results in physical, sexual, psychological, and/or

domestic misery or suffering including threats to commit unlawful acts, coercion or deprivation of independence in the environment Home tanngga.

This fact shows that acts of violence against women, especially wives, are a serious social problem but lack adequate response. They consider that domestic problems are domestic (private) matters that are closed, so there is a reluctance of society to discuss personal issues into external discourse because of the values that validate them, especially by religion (Arifin & Lukman, 2016)

## Library Review

### 1. Legal Protection

Legal protection is a basic principle in the legal system that guarantees the rights and interests of individuals or groups in society. This principle refers to efforts to protect everyone from abuse of power and unfair or arbitrary treatment

### 2. Victims of violence

According to Law Number 23 of 2004 Article 1 paragraph (3) concerning the Elimination of Domestic Violence. Article 1 paragraph (3) which reads "Victim is a person who experiences violence and/or threats of violence within the scope of the household".

### 3. Wife

Definition of Wife is a Indonesian word that means life friend, married woman. and *Imra'ah*. equivalent in English to wife, *spouse*, *mate*, *consort*, while the word *Imraah* is equivalent to *woman*, *wife*.

### 4. Maqasid Syariah

Maqasid Sharia is a concept that emphasizes the purpose of establishing Islamic law in an effort to maintain the benefit of human life, bring benefits and avoid harm. Maqasid Shari'ah is defined as "the purpose of Allah and His Messenger in formulating Islamic Shari'a". The goal is to take advantage and avoid the madharatan of man himself, both in this world and in the hereafter (ahmad, 2020)

## Method

This research uses a normative juridical approach method, namely legal research conducted by examining library materials or secondary data as basic material for research by conducting searches of regulations and literature related to the problem under study and the data sources used in this study include primary legal materials and secondary legal materials. Primary legal materials are legal materials that bind or make people obey the law, including legal products of books of jurisprudence that are the subject of study and other legal products as a tool of criticism. Secondary legal material includes explanations of primary legal material in the form of doctrines and theories of experts found in books, journals and on websites.

## Discussion

### 1. Legal Protection of Wives of Victims of Family Violence

Etymologically, protection comes from the word *lindung*, gets the prefix *perdan* suffix *an*. In Indonesian general dictionary compiled by W.J.S. Poerwodarminto that protection means shelter. Regarding legal protection, Philipus M. Hadjon stated that there are two means of legal protection, namely: means of preventive legal protection and means of repressive legal protection. The means of preventive legal protection are especially closely related to the *principle of freis ermessen* as a form of legal protection in general. Meanwhile, the means of repressive legal protection in Indonesia are handled by judicial bodies within the General Court, Government Agencies which are administrative appellate institutions and special agencies. (M.Hadjon, 1987)

In this case, wives who are victims of domestic violence must get legal protection in accordance with the mandate of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Acts of violence are a form of oppression and human rights violations committed by a person to others, certain groups to other groups, adults to children, employers to their servants and men to women. (Rahmi, 2018)

Violence committed by husbands against wives within the household is one form of violence against women that occurs in many communities. This is a result of the relationship between men and women in the household when men are superior to women, thus forming a system in the family where men control women, one of which is by violence. Domestic violence refers to any act based on sex, resulting in physical, sexual and psychological misery and suffering of women including threats of certain actions, coercion or arbitrary deprivation of liberty either in public or in private settings.

Domestic violence is very common and the victims are generally wives and children. One of the highest causes of divorce is physical and psychological abuse. The violence can be committed by the husband to the wife, or vice versa, but the most dominant is the act of violence committed by the husband against the wife. The forms of domestic violence in Article 5 of the Law on Domestic Violence include: Physical violence; Psychic violence; Sexual violence; or Domestic neglect. Article 10 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence states that victims of domestic violence are entitled to protection from their families, police, prosecutors, courts, advocates, social institutions, or other parties either temporarily or based on the determination of protection orders from the court, health services in accordance with medical needs, special handling related to the confidentiality of victims, Assistance by social workers and legal aid at every level of the examination process in accordance with the provisions of laws and regulations and spiritual guidance services. Regarding cases of violence against wives, the law to be treated for perpetrators of violence still refers to the Criminal Code, with the threat of punishment contained in article 351 of the Criminal Code (Persecution), Article 352 of the Criminal Code (minor persecution), article 353 of the Criminal Code (premeditated persecution), article 354 of the Criminal Code (Severe

persecution), article 355 (severe premeditated persecution) and article 356 of the Criminal Code (Persecution committed by father or mother (legal), wife or child.

Legal protection is any effort made by parties to overcome violence against wives in particular and women in general in the form of physical, psychological, sexual and economic forms can be done by anyone. For example, it can be done by the victim's family, neighbors of the victim, community leaders, law enforcement (police, prosecutors, judges, social institutions and so on. What is clear is that the parties in question can provide a sense of security to the wife of the victim of husband violence. Wives of victims of domestic violence often can't do much or are confused because they don't know where to complain. This is due to the existence of a culture where women who have become wives are the responsibility of their husbands, so that if there is violence, many are not revealed to the surface because they consider it a family disgrace. So it can be considered that the wife of the victim of domestic crime participates in protecting domestic crime. The increase in violence against wives in Indonesia has encouraged various groups to overcome it in the form of applicable laws and regulations. The role of legal protection for victims of violence is an important part of the discussion. There are a number of psychological and emotional impacts experienced by victims and raise the importance of victim support and recovery through therapy and advocacy services that are in accordance with the violence experienced by victims both physically and psychologically.

There are several legal instruments that can protect the wife from acts of violence committed by husbands, including;

- a. Kitab the Criminal Law (KUHP). Criminal law is a public law that contains several provisions on
  - 1) General rules of criminal law relating to certain acts accompanied by the threat of criminal sanctions for violating the prohibition.
  - 2) Certain conditions that must be met for violators to be subject to criminal sanctions.
  - 3) Actions and efforts that can or should be carried out by state tools in order to determine and implement criminals (Chazawi, 2001) (Chazawi, Explanation of Criminal Law, 2001, p. 1 )

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persecution that endangers the other party. If the husband commits violence against the wife under this Article the wife can file for divorce in court. In addition, the wife also has the right to apply for restitution to the judge in court hearings. A and restitution is compensation given to victims of physical and psychological violence or their families by criminal offenders or third parties.

Based on Perma Article 4 of Perma 1/2022, the proposed restitution can be:

- 1) compensation for loss of wealth and/or income;
- 2) compensation, both material and immaterial, incurred as a result of suffering directly related to the criminal act;
- 3) reimbursement of medical and/or psychological treatment costs; and/or
- 4) Other losses suffered by victims as a result of criminal acts, including basic transportation costs, attorney fees, or other costs associated with the proceedings

For psychological violence, it is more difficult to prove it than physical violence, because the physical violence as a result can be seen in reality and proven by visum. While psychological violence requires the role of a psychiatrist (Psychiatrist to determine the severity of the impact of violence experienced by victims.

## 2. Protection of the Wife in Islamic Family Law Maqashid Shar'iah Perspective

Maqasid Sharia consists of two words, namely Maqasid and Shar'iah, Maqasida is the jama' form of maqsuudu which means intentionality or purpose. Shari'ah means linguistically the way to a source of water. The road to this water source can also be said to be the road to the main source of life. The meaning of Maqasid al-Sharia according to Abdullah Yusuf Ali, in The Holly Quran, Shari'ah is everything that is used or ordained by Allah Almighty in religion for the arrangement of the lives of His servants (Mawardi, 2010) (Bakrie, 1996)

A household based on the teachings of Islam or an Islamic household of course or certain characteristics. The cirri will indicate that a household has run well and in accordance with Sharia and Islamic religious teachings. As for its characteristics: as follows:

### 1) Based on a sharia-compliant marriage

Marriage is the first step to building a household. In a marriage, of course, there are things that must be fulfilled. If the marriage is to gain the pleasure of Allah SWT then the marriage can be the foundation of a harmonious Islamic household.

### 2) Please help in worship

An Islamic household is a household in which there is a husband and wife who support each other and help in terms of worship and doing good. A wife should always support her husband's worship and motivate him and vice versa.

### 3) Fulfill obligations and responsibilities

Both husband and wife in their household have different obligations and responsibilities. The husband's duty to his wife, to lead, educate and meet his wife's



needs and earn a living while the wife's duty to her husband is to serve, meet her needs and take care of her family when the husband seeks naf

**4) Fulfilled all his needs**

A husband's job is to provide for his wife and family members and a wife also has her own duty to help meet the needs in her household. One of the signs of a harmonious and Islamic household is the fulfillment of needs, both material and non-material needs.

**5) Have a friendly relationship**

A household that sakinah mawaddah and warahmah is a household filled with love and affection. Not only that, Islamic households are also filled with patience and tenderness between married couples. If one makes a mistake then the other will give advice and point to the right path and a husband is obliged to give advice and punishment if necessary if his wife resists and disobeys it

**6) Avoiding immorality**

Immoral acts and everything related to them must be kept away from an Islamic household. Husband and wife must be able to educate their children well and keep away something that is forbidden by religion to be done in the house such as installing paintings, indecent pictures, listening to music, events that are not educational and so on (Islam.com, 2006)

The forms of wife protection in Islamic family law from the perspective of maqasid al-Shari'ah include the protection of the wife in getting an inner living from the husband, protection of the wife's right to get a place to live and the right to obtain a useful education, then the protection of the wife from physical, psychological and sexual violence. . In the Islamic concept of life in the household must be in line with Islamic law, namely the protection of the guarantee of 5 main principles in Islam, namely:

**1. Protection / guardianship of religion**

Victim protection from the principle of Sharia Maqasid is a form of protection by deliberation or bringing together both parties concerned, namely victims and perpetrators to solve the problem by expressing wishes from each party so that there is an agreement that has been agreed well and without any resentment to victims and perpetrators and parties related to the purpose of benefiting the people. This peace makes the mind calm and leaves all its affairs to Allah SWT trying to be patient and sincere.

**2. Protection / care of the soul**

Protection of the soul which is the purpose of Islamic law is a form of protection for human survival (hifdz an-nafs). Protection has basic values, namely preventing injustice, forgiveness, forgiveness, and gratitude between both parties. So that the value provides a peaceful settlement and provides a way out according to what each party wants, especially the victim as a person who has suffered a lot.

**3. Protection / keeping sense**

The maintenance of reason is very important for man by using his intellect man can think about Allah SWT, the environment and himself. Often a wife who is a victim of a husband's arbitrary actions in the domestic sphere is often denied her freedom. The painful act is healed by providing support to the victim and requiring the perpetrator to

be held accountable. That way the victim is able to express his emotions and thinking ability if he has expressed his desires and what kind of will to the perpetrator.

**4. Protection / keeping offspring.**

Allah Almighty created us in pairs to multiply offspring. Islam provides protection in terms of maintaining its sustainability. Physical violence will not provide optimal recovery, but in addition to physical violence, emotional violence that needs special attention to victims for the integrity of the household to be harmonious and prosperous. Maqasid sharia expects a household to be a sakinah, mawaddah, warahmah household.

**5. Protection / safeguarding of property** Within the scope of the household

A wife is entitled to a decent living from a husband. In fact, if the husband who has committed domestic violence can compensate and can provide for his family back as a form of responsibility and regret. If the settlement is peaceful and provides a solution in accordance with each party, want more, especially the victim as a person who has suffered a lot. With this value, the survival of victims and perpetrators lasts. That way the victim is able to express his emotions and thinking ability if he has expressed his desires and what kind of will to the perpetrator. (Difficult, 2015)

In Islam a husband is commanded to treat his wife ma'ruf with the prohibition to do harm to the wife, such as good ethics, charisma in associating with the family, and in society. From here each husband and wife has the right and obligation to form a perfect home life.

**Impulsion case**

The government's obligation to protect its citizens from discriminatory behavior must be carried out comprehensively by taking into account the rights that wives should get in domestic life, including the right to earn an inner living from the husband, the right to get protection, and the right to get respect, the right to get proper treatment from her husband and the right to obtain non-discriminatory legal decisions in divorce matters, Childcare and inheritance, while still placing justice in the highest position as an effort to create good association (mu'asarah bil ma'ruf) in the family environment and for the realization of a balance of rights and obligations between husband and wife without any sense of intervention with each other. In the view of maqasid al-Shari'ah the forms of protection of wives as stated in Islamic family law that, protection of the maintenance of the soul (hifzh an-nafs) and the maintenance of offspring (hifzh an-nasb). This form of protection will give birth to a family that is fulfilled for its livelihood and the rights of its wife and form a sakinah family, mawaddah warahma that is protected from violence in any form. In the Islamic concept of life in the household must be in line with Islamic law, namely the protection of the guarantee of 5 main principles in Islam, namely:

- a. Protection/ Keeping religion
- b. Protection/care of the soul
- c. Protection / keeping sense
- d. Protection/safeguarding offspring
- e. Protection/care of family property.



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