

PROTECTION OF WOMEN VICTIMS OF SEXUAL VIOLENCE FROM THE PERSPECTIVE OF MAQASHID SYARIAH

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Abstract: *Sexual violence against women constitutes one of the most profound violations of human rights, threatening women's physical, psychological, and social well-being. This article aims to analyze the protection of women victims of sexual violence from the perspective of maqashid syariah. Maqashid syariah, as the overarching objectives of Islamic law, emphasizes the protection of five essential elements: religion, life, intellect, lineage, and property. In this context, the protection of life and the dignity of women constitutes the principal foundation for formulating an effective protection framework. This article identifies the legal and protective mechanisms provided by Islamic law for victims of sexual violence, exploring principles of justice, the restoration of victims' rights, and the prevention of sexual violence. Through the lens of maqashid syariah, this article also discusses the critical roles of the state, civil society, and religious institutions in supporting victims, as well as in implementing policies consistent with fundamental Islamic values. Furthermore, this article proposes several practical strategies within the national legal system that can strengthen legal protection for women victims of sexual violence, while integrating the concept of maqashid syariah as a foundational principle in legal and policy reform. As such, this article makes a significant contribution to the advancement of scholarship on women's protection from an Islamic perspective, offering concrete solutions toward the reduction of sexual violence against women in contemporary society.*

Keywords: *Protection of Women; Victims; Sexual Violence; Maqashid Syariah*

Introduction

Sexual violence against women constitutes one of the most pervasive forms of human rights violations, persisting across numerous countries, including Indonesia. It represents an act that degrades and strips away human dignity and can occur across all spheres of life, including education, the economy, culture, religion, and ethnicity (Amran Suaidi, 2023). Data from the National Commission on Violence Against Women (Komnas Perempuan) indicate that in 2020, as many as 12,732 cases of violence against women were recorded, approximately 60 percent of which involved sexual violence. These cases of sexual violence are varied in nature, ranging from sexual harassment and rape to domestic violence. The problem is rendered more complex by the fact that victims frequently encounter social stigma, obstacles in accessing justice, and inadequate legal protection (Komnas Perempuan, 2020). Deficiencies in protective systems, whether in the form of social support, educational institutions, religious bodies, or legal institutions, have resulted in victims facing profound difficulties in obtaining assistance, justice, and comprehensive recovery (Martini Idris, 2026).

From the perspective of Islamic law, the protection of women victims of sexual violence has a firm doctrinal basis in the teachings of maqashid syariah. Maqashid syariah, which literally denotes the objectives or purposes of Islamic law, is concerned with the protection of five fundamental elements: the preservation of religion, life, intellect, lineage, and property. When

applied to the protection of women victims of sexual violence, maqashid syariah provides a robust legal and ethical foundation for shielding women from sexual violence. Accordingly, the legal protection of women is not solely a state obligation but also a moral and religious imperative consistent with the fundamental values of Islam (Al-Qaradawi, 2015). In the context of women's protection, maqashid syariah underscores the importance of preserving honor (hifz al-'irdh) and recognizing women's entitlement to justice and protection from all forms of violence (El-Awa, 2007, p. 241). This study seeks to address several key questions, foremost among which is how maqashid syariah conceptualizes the protection of women victims of sexual violence.

Literature Review

Sexual violence against women is a problem that has attracted global attention. According to data from the National Commission on Violence Against Women (Komnas Perempuan), thousands of cases of sexual violence are recorded annually, causing harm to victims not only physically but also inflicting prolonged psychological suffering (Komnas Perempuan, 2020). Within the framework of positive law in Indonesia, the protection of women victims of sexual violence is regulated under Law Number 12 of 2022 on the Criminal Offense of Sexual Violence (Tindak Pidana Kekerasan Seksual/TPKS), which is intended to provide stronger legal protection for women. Notwithstanding this regulatory framework, the implementation of the law frequently encounters significant challenges, particularly with respect to public awareness and the existence of gaps within the legal system that continue to permit injustices against women victims of sexual violence (Kusumaningtyas, 2021).

In many instances, sexual violence is not confined to its physical dimension but also encompasses social, cultural, and psychological elements. Victims frequently experience isolation, stigmatization, and significant difficulties in accessing legal assistance (Brownmiller, 1975). In a considerable number of cases, women who are victims of sexual violence are deterred from reporting the offense due to fear of social consequences, further violence, or a lack of confidence in the judicial system (Merry, 2009). This creates a profound dilemma in efforts to protect women and underscores the necessity of a more holistic approach in addressing the problem.

Maqashid syariah is the concept that underlies the objectives of Islamic law in human life, prioritizing the protection of five fundamental elements: religion, life, intellect, lineage, and property. In the context of women's protection, maqashid syariah emphasizes the preservation of al-'irdh (honor) and al-nafs (life), both of which are directly relevant to the protection of sexual violence victims. This doctrine holds that the protection of a woman's honor is an obligation that must be upheld by both society and the state (Al-Qaradawi, 2003). Under Islamic law, women possess the right to be respected and protected from all forms of violence, including sexual violence, which imperils their dignity and honor.

According to El-Awa (2007), maqashid syariah provides guidance for establishing a system that not only protects victims physically, but also furnishes the emotional and psychological protection required by women in the aftermath of sexual violence. This approach is oriented toward restoring the dignity of victims and reinforcing their standing in society through the enforcement of their rights.

Under Islamic law, sexual violence against women is regarded as a grave violation of human dignity that must be afforded maximum legal protection. The enforcement of law grounded in the principles of maqashid syariah emphasizes justice, equality, and comprehensive redress for women victims of sexual violence. A pivotal principle of maqashid syariah is hifz al-'irdh (the preservation of honor), which requires that every individual, particularly women, be protected from sexual harassment and violence (El-Awa, 2007).

Hassan (2009) further contends that in the context of women victims of sexual violence, maqashid syariah operates to guarantee social justice and to provide solutions grounded in the protection of fundamental human rights, including the right to live free from violence and the right to a dignity untainted by acts of violence.

Method

This study employs a qualitative approach utilizing library research methodology and document analysis. Secondary data were collected from legal literature, texts on maqashid syariah, and scholarly journals addressing women's protection and sexual violence. This approach enables the researcher to explore the concepts of maqashid syariah and their application within social and legal contexts. Analysis was conducted descriptively through the lens of maqashid syariah, specifically its five principal tenets: the preservation of religion (hifz al-din), life (hifz al-nafs), intellect (hifz al-aql), lineage (hifz al-nasl), and property (hifz al-mal). The researcher further draws a comparative analysis between human rights frameworks and maqashid syariah to evaluate the adequacy of victim protection.

Results and Discussion

1. Maqashid Syariah and the Protection of Women

Legal protection is consistent with the purposes of law in realizing the common good, providing benefit, and preventing harm on earth, as elaborated through five aspects (al-kulliyat al-khams or al-daruriyyah al-khams). Maqashid syariah, understood as the supreme objectives of Islamic law, encompasses five essential elements: religion, life, intellect, lineage, and property. These five dimensions of protection, as elaborated by al-Syathibi, include the protection of religion (hifz al-din), protection of life (hifz al-nafs), protection of intellect (hifz al-aql), protection of lineage (hifz al-nasl), and protection of property (hifz al-mal). This signifies that Islamic law confers protection as a mercy upon all creation, as affirmed in Surah Yunus verse 57 and Surah al-Anbiya' verse 107. Al-Syathibi articulated the doctrine of maqashid al-syari'ah grounded in al-kulliyat al-khams (the five legal protections), which are further classified into three hierarchical levels: daruriyyat (protection of primary necessities), hajjiyyat (protection of secondary necessities), and tahsiniyyat (protection of tertiary necessities).

The first and highest objective pertains to daruriyyat needs, which ensures security with respect to the fundamental necessities of life and constitutes the primary purpose of Islamic law; should these needs remain unguaranteed, social order will break down. The five protective dimensions, if absent, would not significantly disrupt the order of human life, but would nonetheless create hardship. The principal purpose of the secondary level, therefore, is to alleviate hardship, reduce the burden of legal obligation, and facilitate human engagement in civil transactions and the exchange of benefits.

The realization of maqashid al-syariah necessitates attention to the general principles governing interpersonal relations among human beings. These principles include: human dignity (karamah insaniyah), referring to the honor bestowed by Allah upon human beings, as referenced in Surah al-Inshirah verse 4 and Surah al-Hujurat verse 13; freedom and liberty (al-hurriyyah), denoting a freedom accompanied by responsibility for the obligations incumbent upon one on earth, as stated in Surah al-Baqarah verse 256; human solidarity (ta'awun al-insani), reflecting the divine command for mutual assistance, compassion, and support, which constitutes the foundation of the humanitarian character intrinsic to human beings; and justice, which is the right of all human beings, as affirmed in Surah al-Nahl verse 90. This principle is also articulated by Ibn Qayyim al-Jawziyyah, who asserted that among the distinctive characteristics of Islamic law are justice, mercy, and the promotion of human welfare. Accordingly, any rule that does not

embody these elements, or that instead produces harm (mafsadah) and futility, does not constitute Islamic law.

Sexual violence is an act that contravenes universal humanitarian norms and values, and is unequivocally prohibited by all religions, particularly given the objectives of Islam, namely to provide mercy and benefit for all of humanity and the universe (rahmatan lil alamin), as elaborated through maqashid al-syariah, encompassing: hifz al-din, hifz al-nafs, hifz al-aql, hifz al-nasl, hifz al-mal, and hifz al-'irdh. Sexual violence stands in direct opposition to the objectives that are to be realized in human life. In the context of sexual violence against women, the most pertinent dimensions are the preservation of life and lineage. Islam places the highest emphasis on respect for the dignity and life of every individual. Consequently, sexual violence is manifestly contrary to maqashid syariah, as it undermines both of these essential elements.

a) Hifz al-Din (Preservation of Religion)

Hifz al-din encompasses the protection of religion, including matters of creed, morality, worship, and civil conduct, so that all individuals may engage in worship and practice the cardinal values of their respective faiths without interference or being interfered with. The principle of family protection has been affirmed in the Qur'an as a religious norm; thus, sexual violence demonstrates the perpetrator's moral bankruptcy. Sexual violence is antithetical to Islamic values, as authority and power over others may only be exercised for the benefit of the vulnerable, as expressed in the legal maxim: "the authority of a leader over the people must be bound by public interest." According to Amina Wadud, tawhid (the oneness of God) constitutes the theological foundation for the equality of men and women. This equality forms the basis for a relationship of reciprocity between men and women. A patriarchal social system that elevates men as superior and subordinates women is an act of associating partners with God that is antithetical to the concept of tawhid (Faqihuddin Abdul Kodir, 2021).

In interactions between members of the opposite sex, Islam instructs both men and women to consistently wear the garment of piety (libas al-taqwa), meaning the preservation of tawhid or faith that produces public benefit and good deeds (amal shaleh). Both are likewise commanded to govern their inner disposition in regard to how they perceive the opposite sex (ghadd al-basar, not merely lowering the gaze), viewing the opposite sex as intellectual and spiritual beings so that they do not interact in a manner devoid of reason, thereby enabling them to honorably guard their sexual organs (hifz al-furuj) and reproductive faculties. The conduct of a perpetrator of sexual violence plainly demonstrates moral weakness, manifested in the inability to govern sexual impulses and in the domination of the victim through coercion. This reflects a failure to uphold creed, morality, worship, and civil conduct. The failure of a perpetrator of rape to control his sexual impulses constitutes his own moral responsibility, a transgression of the principle of hifz al-din in maqashid al-syariah.

In committing such acts, the perpetrator engages in an abuse of power, operating under the belief that he possesses greater authority and strength than the victim, thereby acting in an arbitrary and oppressive manner against the victim. A person found guilty of committing sexual violence is classified as a wrongdoer (zalim) and a desecrator of the dignity of Allah's creation known as human beings, while the woman who becomes the victim is characterized as madzlum, one who has been wronged. The perpetrator deliberately exploits the powerless position of the woman for his own unilateral benefit, with complete disregard for the diverse and lasting harm inflicted upon the victim, who may require a prolonged period of recovery.

On the other side, women who are victims of sexual violence, especially rape, particularly those who experience an unwanted pregnancy, frequently blame fate and question the justice of Allah, making it difficult for them to observe the principle of hifz al-din.

Consequently, if society fails to render assistance, the victim may come to blame her religion for failing to stand by her.

b) Hifz al-Nafs (Preservation of Life)

Islam asserts that every life, male or female, must be truly and fully protected from all harmful practices and acts of violence that threaten human life, including physical violence. Allah does not condone any act of harm against those who are innocent, as stated in Surah al-Ahzab verse 58, which may be rendered as: “Those who harm believing men and believing women without any cause they have given, they have certainly borne the burden of false accusation and manifest sin.”

The Qur’an further prohibits inflicting harm upon believers, as set forth in Surah al-Buruj verse 10, which states: “Verily, those who persecute believing men and believing women and then do not repent shall suffer the torment of Hell, and they shall suffer the torment of burning.”

This protection of life extends without exception to enslaved persons. Allah affirms His attribute as the Most Forgiving and Most Merciful in prohibiting masters from compelling their female slaves into prostitution (al-bigha’), even as those slaves desire to preserve their chastity, as contained in Surah al-Nur (24): 33, which may be rendered as: “And do not compel your slave girls to prostitution, when they desire chastity, to seek the fleeting gains of worldly life. And if someone should compel them, then indeed, Allah is Forgiving and Merciful [to them] after their compulsion.”

Surah al-Nur verse 33, as elaborated above, demonstrates the effort to prohibit all forms of coercion and sexual exploitation, as well as the obligation to support and accompany victims so that they may return to a state of safety and confidence, achieve full recovery, and regain their prior capacity and resilience (Congress of Women Scholars, 2022). The preservation of life requires ensuring that all values, norms, laws, and regulations genuinely protect human life, for both men and women. Sexual violence poses a serious threat to life, and may even carry the risk of death; accordingly, such conduct violates the principle of the preservation of life (hifz al-nafs). In maqashid syariah, the protection of life constitutes the foremost priority. Sexual violence threatens life and inflicts prolonged physical and psychological trauma upon victims (Abu Zayd, 2018).

The protection of the life of a rape victim, inclusive of her physical and mental health devastated as a result of the violence endured, constitutes her inviolable right. The lives of women victims of rape are extremely vulnerable to stigmatization, discrimination, victim-blaming, social exclusion, and continuing violence. As a consequence, victims may also engage in acts of self-harm, including suicidal ideation. Some victims may even fall into prostitution and illicit drug use, feeling themselves to be unclean and without value. Permitting them to remain in such a condition, therefore, violates the principle of hifz al-din, which mandates the protection of religion, and simultaneously hifz al-nafs, which mandates the protection of human life in Islamic law.

c) Hifz al-Nasl (Preservation of Lineage)

Hifz al-nasl denotes the guarantee of the right of every human soul to grow and develop with dignity. Islam therefore demands justice, the fulfillment of basic needs (the right to life), employment, liberty and security, and freedom from persecution and arbitrariness. It encompasses the protection of the family by establishing all rules, policies, and daily practices capable of shielding every family member, male and female, from all forms of harm and ensuring that they live with dignity, health, and well-being. Islam guarantees the right of every human soul to grow and develop with dignity. In this regard, maqashid syariah also focuses on the protection of future generations (Al-Syathiri, 2021).

Sexual violence not only harms the body but may also damage a woman's reproductive capacity, whether through an unwanted pregnancy or the transmission of a sexually transmitted infection. Victims of sexual violence suffer physical violence, psychological trauma, economic harm, and social harm, all of which cause trauma and threaten the quality of their lives (Atikah Rahmi & Hotma Siregar, 2020). Sexual violence causes physical pain and prolonged psychological trauma that may render a victim unwilling to enter into marriage. Even if the victim does marry, the lingering sense of discomfort following the rape she experienced remains. The damage to the victim's reproductive organs and functions following rape means that the family values of protection and nurturing are no longer experienced by the victim.

The profoundly negative consequences of sexual violence endured by the victim, in the form of protracted suffering, not only result in trauma and depression but also carry the risk of an unwanted pregnancy. The victim is confronted with the dilemma of either terminating the pregnancy or continuing it. A pregnancy under such circumstances also carries health risks for the victim as a result of the psychological disturbance she has suffered, which will in turn affect the fetus she carries. This is particularly the case when the victim is a minor, as the risks to reproductive health are compounded. Beyond this, when the victim is compelled to give birth to a child from an unwanted pregnancy, the legal status of that child becomes unclear, as the child is born without a legally recognized father.

In Islam, the relationship between a man and a woman in a legally binding bond can only be entered into through matrimony, with the aim of establishing a household characterized by tranquility (*sakinah*), mutual affection (*mawaddah*), and compassion (*rahmah*). The concept of human rights within the framework of *hifz al-nasl* is of paramount importance for the preservation of human dignity. A person gains honor through matrimony; conversely, a person is dishonored in its absence. Marriage is intrinsically correlated with lineage: through lawful matrimony, a child born thereunder acquires legal status and entitlements as a legitimate child. A child born of an unlawful union, by contrast, does not acquire those rights from either parent. Such circumstances constitute a violation of the principle of *hifz al-nasl*. *Hifz al-nasl* within *maqashid al-syariah* explains that Allah, in His revelation, affirms the prohibition of sexual deviance on account of the harm (*mudharat*) and corruption (*mafsadat*) it inflicts upon the victim.

d) Hifz al-Aql (Preservation of Intellect)

Women victims of rape also suffer prolonged mental and intellectual disturbances; they may be barred from attending school or pursuing formal education, may struggle to think clearly and rationally in their own best interests, and many are driven to self-deprecating and self-destructive thoughts. Some victims are compelled to discontinue their education as a result of a pregnancy caused by rape. As noted above, empirical evidence demonstrates that cases of sexual violence generate profound psychological trauma in victims, damaging their intellect and mental faculties. The destabilization of the victim's psychological state as a result of sexual violence necessarily impairs her cognitive and rational capacities, for a sound mind proceeds from a sound psychological state. When the psychological state is unsound, the capacity for clear thinking is severely compromised. Permitting women victims of rape to continue in a state of impaired cognition resulting from psychological disruption thus constitutes a violation of the principle of *hifz al-'aql*, the protection of intellectual capacity in Islamic law. Meanwhile, victims who fall within the category of children retain the right to education for the continuity of their lives, as the right to education is a fundamental human right that must be honored. Children, as the next generation, will carry forward the struggle of the nation and the faith in the future.

e) Hifz al-Mal (Preservation of Property)

Islam guarantees the right to ownership of assets, property, and other possessions. It prohibits the unlawful appropriation of another person's property through acts such as theft, corruption, monopolization, and oligopolization. Islam protects property and assets by ensuring that all persons, both male and female, have access to ownership, the opportunity for economic advancement, and the capacity to meet their daily needs. The consequences of sexual violence suffered by women violate this principle, as the victimization may result in the closure of the victim's economic access due to her incapacity following the sexual violence, or because she has ceased or been dismissed from employment on the grounds that her presence brings disrepute to her employer. A victim's emotionally fragile state, burdened by traumatic stress, will make it difficult for her to manage household finances. In a number of cases, victims are no longer able to sustain employment, leading to a diminution in their financial access. This gives rise to conditions of impoverishment and marginalization of the victim, which are incompatible with the principle of hifz al-mal in maqashid al-syariah.

On the basis of maqashid syariah, the state is obligated to protect women from violence, an obligation reflected in the duty of the state to ensure that the law safeguards women's rights (Al-Qaradawi, 2015). Maqashid syariah also underscores the importance of victim recovery through physical and psychological rehabilitation. Protection extends not only to the moment when violence occurs but also to the period thereafter (Al-Syathiri, 2021).

Conclusion

This study concludes that maqashid syariah provides a strong ethical and legal foundation for the protection of women victims of sexual violence. The state and civil society must collaborate in constructing a legal system that prioritizes the preservation of life, lineage, and the dignity of women. Through the application of the principles of maqashid syariah, Indonesia can strengthen the protection of women and reduce the incidence of sexual violence.

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