

## Analysis Maqashid Syari'ah on The Impact of Domestic Violence in Law 23 Of 2014 Concerning The Elimination of Domestic Violence

<sup>1</sup>Muhammad Alwi Dalimunthe

<sup>1</sup>STIES Imam Syafii, Indonesia

[dmuhammadalwi@gmail.com](mailto:dmuhammadalwi@gmail.com)

**ABSTRACT:** Law Number 23 of 2014 concerning PKDRT is a legal umbrella for all Indonesian citizens because it provides a guarantee of justice for the violence experienced. From the Maqashid Syariah point of view, this law is in accordance with the objectives of Islamic sharia, namely protecting religion, soul, mind, property and family. Domestic violence as a discriminatory act has a negative impact on family members who experience domestic violence, so that all forms of resolution of this act must consider justice, namely in accordance with the maqashid of sharia.

**KEYWORDS:** Domestic Violence; Maqashid Syariah; Law Number 23 of 2014 concerning PKDRT

### INTRODUCTION

In Indonesia there is a law that regulates marriage, namely Law Number 1 of 1974 concerning Marriage. The law explains that the purpose of marriage is to form a happy household based on the Almighty God. Furthermore, in the Compilation of Islamic Law it is stated that marriage is a very strong contract in obeying the commands of Allah SWT. Thus, the marriage that is built must have Islamic values and have clear goals in accordance with Islamic law.

A family is like a building, to keep the building sturdy and strong, a quality building foundation is needed. This foundation is built on the basis of religion which is then accompanied by the mental and physical readiness

of the occupants of the house. In a household there are often differences of understanding which result in arguments. It is not uncommon for these arguments to

result in various undesirable things, such as domestic violence (KDRT).

Based on article 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, it is explained that domestic violence is any act against someone, especially women, which results in physical, sexual, psychological misery or suffering, even neglect. Apart from that, violence also includes acts, coercion or deprivation of liberty which are classified as unlawful in the household sphere.

The violence experienced generally occurs in personal relationships, whether in the family relationship between husband and wife, father and child, uncle and nephew or grandfather and grandchild. Apart from verbal acts, there are also non-verbal acts which fall into the category of domestic violence, psychological threats and so on.

The enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence has become a legal umbrella as well as a guarantee for criminal

acts against domestic violence as a form of protection for victims of domestic violence. Some of the objectives of establishing the PKDRT Law are as follows:

1. Prevent various forms of domestic violence
2. Protecting victims of domestic violence
3. Following up on perpetrators of domestic violence
4. Maintaining household integrity and harmony.

Based on data from the National Commission on Violence Against Women's annual records in 2020, it was recorded that the domain of domestic violence occupied the highest position with a figure of 75.4% compared to other domains. There were 4,783 cases of physical violence against women, 6,555 cases of violence against wives, 822 cases of sexual violence out of 11,105 cases received by Komnas Perempuan (National Commission on Women 2023).

The government as the owner of the highest power is trying to carry out various strategies and programs to provide educational guidance and punishment to suppress the occurrence of domestic violence. The efforts made include outreach to the community, education for prospective husband and wife couples, forming laws and other legal products to improve and enhance the quality of marriage in Indonesia.

Islam is a religion that is *rahmatan lil'alam*. There are several philosophies that are based on the principles of Islamic law. The principles of Islamic law are used as the legal basis for applying Islamic law, one of which is *maqashid asy-syariah*. *Maqashidash-syarī'ah* is defined as, *first* : the wisdom behind a law, *second* : a good final goal that will be achieved by the law, *third*: *ilāhiyyah* goals and moral concepts based on law and *fourth*: benefits (Laila Afni Rambe 2020).

According to Auda, the realization of *maqashid* is an important and fundamental basis for the Islamic legal system. Exploring *maqashid* must refer/return to the main text (the Qur'an and hadith), so that it is not purely based on the opinions or thoughts of

the faqih. Therefore, the realization of the goal becomes a benchmark for the validity of each *ijtihad*, without linking it to a particular tendency or school of thought. The aim of establishing Islamic law must be returned to the benefit of the wider community.

Islam is a religion that upholds human values and always recommends respecting women. There are values contained in Law Number 23 of 2004 concerning the Elimination of Domestic Violence that cannot be seen with the naked eye, so this requires a deeper study using *maqashid asy-syarī'ah*.

## METHODS

The research method used in this study is library research by collecting various related literature, then analyzing the data using a legal-formal approach because the focus of the analysis is on the analysis of *maqashid sharia*. Apart from that, this research also includes family law research which is descriptive analysis in nature. The data analysis method is carried out in several stages, starting from the data processing stage which is carried out with preliminary research, the data processing stage by processing information as data, the data validity checking stage by looking at confirmation between data so that the data obtained is considered appropriate and complete, the final stage is data analysis in answering research questions.

## RESULT

### Basic Concepts

#### A. *Maqashid Asy-Syarī'ah*

##### 1. Understanding *Maqashid Asy-Syarī'ah*

*Maqashid Ash-Syarī'ah* consists of a combination of two words, namely *maqashid* and *ash-Syarī'ah*. The word *maqashid* is the plural form of the words *maqshad*, *qashd*, *maqshid* or *qushud*, all of which come from the verb *qashada-yaqshudu* which has many

meanings, including a direction, goal, middle, fair, not exceeding limits, middle-of-the-road. the middle between excess and shortage. (Mawardi, 2010, hal. 178)

Meanwhile, the word *ash-Syarī'ah* comes from the words *syara'a-yasyra'u-syar'an* which means making shari'ah or regulations/laws. (Al-Munawwir, 1997, hal. 728) . Meanwhile, according to the term *shari'ah*, it is something that refers to a number of Islamic laws revealed to the Prophet Muhammad SAW which are contained in the Qur'an and Hadith. (Syalabi, 1969, hal. 28)

Fazlurrahman provides a *sharia definition* in the form of a path to a water source which can be interpreted as a path to the main source of life. (Fazlurrahman, 1984: 140) So, *maqāṣid ash-syarī'ah* is a purpose/objective that lies behind the provisions of Islamic law. (Auda, 2010, hal. 2) Thus, *maqāṣid ash-syarī'ah* which can be called *maqāṣid* Islamic law, are the intentions behind a law. Or in simple language, *maqāṣid asy-syarī'ah* is the aim and purpose of enacting law. (Nurhayati, 2017, hal. 63)

Talking about *maqāṣid ash-syarī'ah* as a scientific discipline, it is rare to find concrete and comprehensive terminology originating from Salaf scholars. As stated by Ahmad ar-Raisuni, scholars before al-Syatibi had never formulated it, so there are various editorials but they all have similar aims and objectives. (Mutakin, 2017, hal. 551)

Al-Syatibi, as quoted by Asafri, stated that the Shari'a actually aims to realize human benefit in this world and the hereafter. The above expression can be understood to mean that the essence of *maqāṣid asy-syarī'ah* or what is called the legal aim

is none other than the benefit of all mankind.

Ar-Raisuni provides a briefer and more general definition of sharia, namely a number of '*amaliyyah laws* brought by the Islamic religion, both relating to the concept of creed and legal legislation. (Mawardi, 2010, hal. 63) Ibn Āsyur 115 defines *maqāṣid ash-syarī'ah* as all the understanding and wisdom of *shari'* which is implied in all the circumstances of the stipulation of the shari'a, which means that *maqāṣid* cannot only be interpreted as what can be seen in the laws. certain laws in particular.

Based on several versions of the definition of *maqāṣid asy-syarī'ah* which have been stated above, it can be concluded that *maqāṣid asy-syarī'ah* is a goal or purpose for which the Shari'a was revealed to be implemented by humans with the aim of benefiting both individuals and society in general, as well as to guarantee basic human needs such as religion, lineage, soul, mind and property. The presence of *maqāṣid asy-syarī'ah* means that humans can live in peace and security. (Rambe, 2022, hal. 10)

## 2. Variety of *Maqāṣid Ash-Sharī'ah*

Abu Ishaq al-Syatibi, as quoted by Suparman Usman and Itang in his book, formulated five objectives of Islamic law, namely preserving religion, soul, reason, lineage and property, to be further agreed upon by other Islamic legal scholars or what is known as *maqāṣid asy-syarī' ah* (shariah goals). (Usman, 2015, hal. 78) Meanwhile, Imam al-Ghazali called it *al-uṣūl al-khamsah* (five basics). These five elements consist of maintaining religion, soul, reason, offspring and property. However, there are several contemporary *uṣūllyyīn scholars* who add *hifẓ al-irdi* in addition to the five known elements. (Auda, 2015, hal. 34)

Al-Yubi as quoted by Ahmad Sarwat in his book stated that *maqāṣid asy-syarī'ah* consists of five things, namely:

- a. Maintaining the religion stated in the lafaz *شَدَّ يَأْبُو تَ شَرَكُوا أَلَّ*
- b. Maintaining the life/soul as stated in the lafaz *إِنَّ اللَّهَ حَرَّ أَلْتَى النَّفْسَ تَ فَتَلُوا كَلَّ بِالْحَقِّ*
- c. Maintaining offspring as stated in the lafaz *أَلَّ فَوَاحِشَ تَ قَرَّبَ وَ أَكَلَّ*
- d. Maintaining the assets stated in the lafaz *بِ أَلَّ قَسَطَ كَالِدِي زَافَ أَلَّ كَيْلَ كَاكَّ فَوَا*
- e. Maintaining the reason contained in the lafaz *تَ عَقْلُوفَ لَكُمْ لَعَّ*

As with the grouping above, the detailed explanation is as follows:

#### 1) *Hifz ad-Dīn* (Protection of Religion)

Al-Gazali and al-Syatibi, according to al-Amiri, define *hifz ad-dīn* as a punishment for abandoning true teachings, but in fact, this theory has developed and been reinterpreted into a contemporary concept, namely freedom of *faith* according to Ibn's term. Assyria. In the contemporary concept there is no compulsion in belief, worship and the school of thought adhered to and it is not permissible to urge people to change beliefs in order to convert to Islam. Islam pays great attention to this and even provides safety guarantees to avoid complete damage. The embodiment of *hifz ad-dīn* is that Islam recommends protecting places of worship for non-Muslims and the Koran allows war on the grounds of providing freedom in terms of worship.

#### 2) *Hifz an-Nafs* (Protection of Life/Soul)

Islam pays great attention to the protection of the human soul by not exposing it to damage/destruction, so Islam regulates and gives full attention to various forms of guarantees in order to safeguard human rights as a whole. The form of guarantee in question is a prohibition

on explosions or bombings because it can destroy human souls, a prohibition on carrying out abortions and destroying several body parts, injuring or the like.

#### 3) *Hifz al-'Aql* (Protection Against Intellect)

As is known, the classical concept of *maqāṣid* is only focused on prohibiting drinking and intoxicants in Islam due to guarding against reason and lust. In the contemporary era, it has developed by presenting the development of scientific thinking (ideas/ideas/views), travel to seek knowledge, fighting the *taqlid mentality* and preventing the flow of experts abroad (Jasser Auda, 2010 : 3).

#### 4) *Hifz an-Nasl* (Protection of Offspring)

Al-Amiri describes the *maqāṣid theory* of necessity in legal terms for acts that violate morality. Al-Juwaini developed al-Amiri's version of the theory of criminal law (*mazajir*) into a theory of guarding (*ismah*) which was coined by al-Juwaini as *hifz ll al-furuj* which means guarding one's private parts. Furthermore, Abu Hamidi al-Gazālī termed *hifz i an-nasl* including *the maqāṣid of Islamic law* at the level of necessity, as followed by al-Syatibi.

A significant development in the 20th century as initiated by *maqāṣid* theorists. The concept that developed included protecting offspring into a family-oriented theory. As Ibn Asyur, making family care a *maqāṣid of Islamic law*. In this case, Ibn Asyur contributed to the development of the theory of *maqāṣid asy-syarī'ah* and is considered to have paved the way for contemporary scholars to develop the concept and theory of *maqāṣid asy-syarī'ah* in various views.

The concept of *ḥifẓ an-nasl* experienced development together with the concept of *ḥifẓ al-Irdi* (protection of honor) in contemporary *maqāṣid*. *Ḥifẓ al-Irdi* is said to be a fundamental concept in Arab culture since the pre-Islamic period. However, recently, narrators of that time often tell stories about (an Arab poet and hero) fighting the Banī Damdamah people because their honor was tarnished. In the hadith, the Prophet SAW explained that the blood, property and honor of all Muslim people is something that must be respected and must not be violated. (Audah, 2013, hal. 68)

The statement of protection of honor is slowly being changed to protection of human dignity, even replaced with protection of human rights as *maqāṣid* in Islamic law. (Auda, 2019, hal. 57)

### 5) *Ḥifẓ i al-Māl* (Protection of Wealth)

Discussing the concept of *ḥifẓ al-māl* traditionally means punishment for theft according to al-Gazālī, meaning punishment for theft according to al-Amiri. Meanwhile, Al-Juwaini believes in protecting money. Contemporization has recently occurred in traditional concepts which have changed to become more general socio-economic ones. This concept is developing and makes it possible for the application of *maqāṣid* to contribute to supporting universal economic development.

### 3. Classification of *Maqāṣid Ash-Syarī'ah*

*Maqāṣid* is classified based on several dimensions. The details are as follows:

#### a. Levels of urgency and importance, which is a classic classification

The classic classification divides *Maqāṣid Asy-Syarī'ah* into three levels/levels of necessity/urgency, namely primary or *ḍarūriyyat*, secondary or *ḥajjiyyāt* and

complementary or *taḥsīniyyat*. (Auda, 2007, hal. 67) Al-Syatibi is of the view that each level serves and protects the level of necessity that is below it.

#### 1) Inevitability or *ḍarūriyyat*

*Maqāṣid ḍarūriyyat* is intended to maintain five goals, namely maintaining religion, maintaining the soul, maintaining offspring, maintaining the mind, and maintaining property. This level is the highest level and is primary, which means that human life always depends on Him from the *dīniyyah* (religious) and worldly aspects. Islam seeks to realize aspects of *ḍarūriyyat* in two forms of manifestation, namely on the one hand a need must be realized, but on the other hand it states that everything that hinders the realization of this need must be eliminated.

#### 2) Necessity or *ḥajjiyyāt*

*Maqāṣid* is secondary in nature, something that humans need to ease their desires and realize the five main elements more perfectly. So, the attitude of not following this aspect, does not destroy human life and does not destroy the five elements above, but there will be imperfections and even difficulties. (Wahyudi, 2010, hal. 45-46)

#### 3) Complementary or *taḥsīniyyat*

This *maqāṣid* has the character of *beautifying the maqāṣid* that was at the previous level, if at this level it is not realized it will not threaten the existence of any of the five points above and there is no potential for difficulties or even destruction to arise. Fulfillment of aspects of life at this level is a manifestation of Allah SWT's mercy towards humans, but Islam emphasizes giving preference to the two previous

levels, namely *ḍarūriyyat* and *ḥajjiyyāt*.

b. The scope of legal objectives to reach *Maqāṣid Asy-Syarī'ah*

Contemporary scholars are always making improvements regarding *maqāṣid*. Regarding the scope of the law included in it, the revision of the scope of the contemporary version of *maqāṣid* is divided into three levels:

- 1) General *Maqāṣid* ( *al-maqāṣidaaal-āmmah* ); This *maqāṣid* can be found in the Shari'a as a whole, as in the five inevitabilities/necessities above. Ulama also added new *maqāṣid* such as justice, universality and convenience.
- 2) Specific *Maqāṣid* ( *al-maqāṣidaaal-khāṣṣah* ); This *maqāṣid* can be found in certain chapters in Islamic law, such as child welfare in the family law chapter, preventing crime in the criminal law chapter and preventing monopolies in the field of *prayer*.
- 3) Partial *Maqāṣid* ( *al-maqāṣiddaal-juz'iyah* ); This *maqāṣid* consists of the goals to be achieved in a particular law. Like the intention of alleviating difficulties by allowing people.

## 2. Legal Rules in the PKDRT Law and Methods of Resolution

### 1. Legal Rules in the PKDRT Law

Domestic violence is any act committed against a person, especially a woman, which causes misery or suffering whether physical, sexual, psychological and/or neglect in the household, including threatening to take action, coercion or unlawful deprivation of liberty in the household.(Law Number 23 of 2004 concerning the Elimination of

Domestic Violence Article 1) . Article 5 states that every person is not permitted to commit violence within the scope of their household, by: (a). Physical violence, (b). Psychological violence, (c). Sexual violence, (d). Household neglect.

Physical violence as intended in Article 5 letter a is an act that causes pain, falls ill or is seriously injured. Psychological violence as intended in Article 5 letter b is an act that results in fear, loss of self-confidence, loss of ability to act, feeling helplessness, and/or severe psychological suffering in a person.

Sexual violence as in Article 5 letter c includes: (a). Forced sexual relations carried out on people who live within the household, (b). Forced sexual relations between someone within the household and another person for commercial purposes or for certain purposes.

Neglect in the household as in Article 5 letter d, includes:(a). Every person is prohibited from neglecting people within their household, because it is their obligation to provide a decent life, care or maintenance for that person, (b). Neglect also applies to anyone who causes economic dependence by limiting or prohibiting proper work inside or outside the home, so that the victim is under the control of another person.

The Law on the Elimination of Domestic Violence also regulates criminal acts, both general crimes and criminal complaints, including:Article 44 paragraph (4) constitutes a complaint offense, namely:(a). Every person who commits acts of physical violence within the household as stated in Article 5 letter a is threatened with imprisonment for a maximum of 5 (five) years or a fine of a maximum of Rp. 15,000,000.00 (fifteen million rupiah), (b). In cases

that could result in the victim becoming ill or seriously injured, he/she will be sentenced to imprisonment for a maximum of 10 (ten) years or a fine of a maximum of Rp. 30,000,000.00 (thirty million rupiah), (c). In cases that can cause the loss of the victim's life, he will be sentenced to imprisonment for a maximum of 15 (fifteen) years or a fine of a maximum of Rp. 45,000,000.00 (forty-five million rupiah), (d). In the event that an act is committed by a husband against his wife or vice versa which causes illness or obstacles to carrying out work or livelihood, then he will be sentenced to imprisonment for 4 (four) months or a fine of up to Rp. 5,000,000.00 (five million rupiah).

Article 45 paragraph (2) is the reason for the complaint, namely:(a). Every person who commits acts of psychological violence within the household as in Article 5 letter b shall be sentenced to imprisonment for a maximum of 3 (three) years or a fine of a maximum of Rp. 9,000,000.00 (nine million rupiah), (b). In the event of an act committed by a husband against his wife or vice versa which does not cause illness or an obstacle to carrying out his work or livelihood, he will be sentenced to imprisonment for a maximum of 4 (four) months or a fine of a maximum of IDR. 3,000,000.00 (three million rupiah).(Law Number 23 of 2004 concerning the Elimination of Domestic Violence) .

The article above explains that the offense that constitutes the complaint is violence committed by the husband against the wife. The violence in question is violence that does not cause the victim to be hampered in carrying out his work and daily activities. So that victims can make complaints about the acts of violence they have experienced.

Because in this complaint offense, the authorities will not process the act without a complaint from the victim, and it can be revoked by the victim if *in fact* it is the perpetrator's husband/wife.

What is meant by a complaint offense is a criminal act. Several experts have opinions about criminal acts, including: (1). Simons stated that a criminal act is behavior that is punishable by crime, which is against the law, which is committed by a person who is capable of being responsible. (2). VansHamel is of the opinion that a criminal act is a person's behavior that is against the law, which deserves to be punished and is carried out with a mistake. (3). Moeljatno also believes that a criminal act is an act that is prohibited by a legal rule which is accompanied by a criminal threat for anyone who violates the prohibition.(Andrisman, 2007, hal. 25) .

In addition to the penalties mentioned above, the judge can also impose additional penalties on the perpetrator, as stated in Article 50, as follows: (a). Restrictions on the perpetrator's movements are aimed at keeping the perpetrator away from the victim for a certain distance and time, as well as limiting certain rights of the perpetrator, (b). Determination of the perpetrator following a counseling program under the supervision of a certain institution.

a. Methods for Resolving Domestic Violence According to Law No. 23 Thn. 2014

The method for resolving domestic violence according to Law Number 23 of 2004 concerning the Elimination of Domestic Violence consists of 4 (four) parts, including Obligations of the Government and Society, the Rights of Victims of Domestic Violence, providing

witnesses for perpetrators and providing protection for victims.

The obligations of the government and society in preventing domestic violence are regulated in Article 12, including: (a). Formulate policies regarding the PKDRT Law, (b). Organizing communication, information and education about domestic violence, (c). Organizing advocacy and outreach regarding domestic violence, (d). Organizing gender sensitive education and training and issues regarding domestic violence.

Article 13 states, to provide services to victims, the government and regional governments can carry out their respective functions and duties, such as: (a). Providing a special service room at the police office, (b). Providing officers, health workers, social workers and spiritual guides, (c). Provide protection for caregivers, witnesses, family and friends of victims.

Rights that victims must obtain Domestic Violence is regulated in Article 10, including: (a). Providing protection from the family, police, prosecutor's office, court, advocates, social institutions, or related parties either on a temporary basis or by determining protection from the court, (b). Providing health services in accordance with medical needs, (c). Providing special treatment regarding the victim's secrets, (d). Providing assistance by social workers and legal assistance in every legal process, (e). Providing spiritual guidance services.

Perpetrators of domestic violence will be subject to criminal sanctions as regulated in Chapter VIII Article 44 which has been explained above and will receive various criminal threats according to the crime committed. The lightest criminal penalty is 4 (four) months in

prison or a fine of Rp. 5,000,000.00 (five million rupiah) while the heaviest criminal penalty is 15 (fifteen) years in prison or a fine of Rp. 45,000,000.00 (forty-five million rupiah). (Law Number 23 of 2004 concerning the Elimination of Domestic Violence Article 1)

Procedures for protection for victims of domestic violence are regulated in Article 16, namely: (1) Within 1 x 24 (one time twenty four) hours from the time of knowing or receiving a report from the victim, the police are obliged to immediately provide temporary protection to the victim. (2) Temporary protection as intended in paragraph 1 is given no later than 7 (seven) days after the victim is received or handled. (3) Within 1 x 24 (one time twenty four) hours from the time the protection is granted as referred to in paragraph 1, the police are obliged to request a letter of protection order from the court. In Article 17, in providing temporary protection, the police can collaborate with health workers, social workers, volunteer assistants, and/or spiritual guides to accompany victims.

Article 18 states that the police are obliged to provide information to victims about their rights to receive services and assistance. In Article 19, the police are obliged to immediately carry out an investigation after learning or receiving a report about domestic violence. Article 20, the Police immediately convey to the victim (a) the identity of the officer for identification with the victim; (b) domestic violence is a crime against human dignity; (c) the police's obligation to protect victims.

Then Article 21 states, (1) In providing health services to victims, health workers must: (a) examine the victim's health professionally; (b)



make a written report on the results of the examination of the victim and a *post mortem et repertum* at the request of a police investigator or a medical certificate which has the same legal force as evidence. (2) Health services as intended in paragraph 1 are carried out in health facilities owned by the government, regional government or community (Law Number 23 of 2004 concerning the Elimination of Domestic Violence)

### C. Analysis Maqashid Syari'ah on the Impact of Domestic Violence Acts in Law 23 of 2014

#### 1. The Impact of Domestic Violence on Wives and Children

Acts of domestic violence, whether against wives or children, are basically divided into two types, namely physical and non-physical violence. (Milda, 2007, hal. 245). Physical violence includes sexual harassment against wives and daughters, such as touching, unwanted touching, beatings, abuse, destruction of women's genitals, rape and molestation. This category also includes terror and intimidation, forced marriage, underhanded marriage, forced prostitution, negative stigma, labor exploitation, and forced use of contraceptives.

Non-physical violence includes, among other things, sexual harassment against wives and daughters, but not through direct physical touching, such as greetings, whistling, or other forms of unwanted attention, humiliation, and being considered inadequate. This non-physical violence includes leaving without giving news and clarity to the wife and children, not providing a living, not giving attention and affection to the wife and children.

Domestic violence has a very bad impact on wives and children

physically, psychologically and socially, especially if the violence is carried out physically, then the consequences include bruising on the face, head injuries, broken teeth, disability, broken bones and even death. Even worse, if there is sexual violence against the wife and children, the consequences can be fatigue, miscarriage, vaginal abrasions, difficulty in the birthing process, premature birth of the baby, sexually transmitted diseases and even AIDS. (Ayu, 2019, hal. 78)

Apart from the physical impact, domestic violence can also have a psychological impact, such as damage to the self-esteem of the wife and children, mental damage which can cause sadness, confusion, frequent daydreaming, and can even result in mental damage such as madness. Then impactsocial consequences such as : dropping out of school, promiscuityand the loss of character and morals in children, the severing of friendly relations with family, relatives, neighbors and the general public, because of the burden and shame they bear which cannot be known by many people.

Most wives or children who experience physical injuries caused by domestic violence do not want to seek treatmentthe doctor because he felt embarrassed to explain the problem that occurred. Apart from that, this was also triggered by his illness because he did not want other people to know about his family life. In this arena, domestic violence is a bad and disgraceful act because it can harm and offend other people, so it is appropriate for society, religion and the state to prohibit it.

#### 2. Maqashid Syari'ah Analysis of the Impact of Domestic Violence Acts in Law 23 of 2014

Basically, every human being has the same position in Islam, so that

all humans should be respected, respected, loved and cherished regardless of religion, ethnicity, social status, descent, nation and state. What makes the difference between humans is their devotion. Therefore, treating other people well is a necessity and can even be an obligation for every human being.

Domestic violence (KDRT) is an act that violates religious or state rules. It is recommended for other people to love and care for each other, especially in domestic life, of course it should be an obligation. Domestic violence is a disgraceful act because it can hurt, injure, and even kill lives other people, therefore domestic violence should be avoided and protection should be provided for victims of violence.

As for efforts to handle domestic violence victims, both wives and children, must be in line with maqashid sharia, namely the protection of ensuring the 5 (five) main principles, namely: preserving religion, preserving the soul, preserving the mind, preserving offspring and preserving property. Maqashid sharia provides benefits for the Islamic ummah based on goals that have become indicators of these goals.

Domestic violence is an act that always receives attention from the public. This can be seen from the number of divorce cases resulting from acts of domestic violence. In fact, it is not uncommon for this act to become a criminal case, which is generally carried out by the husband. The high rate of domestic violence in Indonesia reflects how Indonesian laws governing domestic violence have not been able to provide awareness to the public.

Islam provides guidelines for life, one of which is based on the concept of maqashid sharia. Talking

about resolving domestic violence, basically this is in accordance with the concept of maqashid sharia. Here's the description:

Maintaining religion (*hifdz al-din*), it is not uncommon for domestic violence perpetrated by a husband against his wife or children to have a major impact on their psychology, so that victims of violence tend to have difficulty expressing gratitude, which results in their feeling of gratitude to the creator becoming weakened. Moreover, if the perpetrator of violence is far from the creator, it is certain that victims of violence will find it difficult to worship and get closer to the creator. Religion is a foundation that must always be maintained by a family, in fact religion can become a shield for various problems that trigger domestic violence. When a person's religion is strong, his faith will prevent his behavior from committing vile and evil acts.

Maintaining the soul (*hifdz al-nafs*), domestic violence is an act of discrimination that can damage the victim's soul. In fact, a husband should provide good guidance to his wife and children, instead of committing acts of violence and abuse. Therefore, the preservation of the soul as in Islamic teachings is not achieved. It is not uncommon for domestic violence experienced by one of the family members to cause mental disorders. A depressed mental state makes it increasingly difficult for the soul to feel happiness, so many victims commit suicide as a result of domestic violence.

Maintaining reason (*hifdz al-'qal*), victims of domestic violence, both wives and children, often experience trauma and psychological disorders, resulting in a person experiencing a decrease in thinking power, always being gloomy and not

thinking clearly. The negative impact caused by domestic violence makes it difficult for the victim to do something good or bad for him. So that the maintenance of the mind as deep as possible is not achieved Islamic teachings. Reason is a gift that God gives to humans, with reason humans can think and work so that it is useful for themselves, other people, religion and the country. When acts of domestic violence weaken a person's way of thinking, it can be said that this is the biggest loss experienced by the victim.

Maintaining offspring ( *hifdz al-nasl* ), domestic violence committed by husbands against wives or children if it is related to sexual violence will certainly damage the victim's honor, and can even damage the victim's offspring. So it is contrary to the principles in the household which are based on *muashara bil ma'ruf* and deliberation.

Maintaining assets (*hifdz al-mal wa al-'irdh*), domestic violence committed by a husband against his wife and children usually results in the husband not carrying out his responsibilities as a husband, such as providing support and other needs. Therefore, the act of neglect carried out by the husband towards the victim is contrary to the principle of preserving property in Islam. In household life, the maintenance of assets should be a shared responsibility, but if acts of domestic violence cause loss of assets then it is equally detrimental to all parties. In fact, it is not uncommon for domestic violence to make their families fall into poverty. This is what every human being should avoid.

Based on the explanation above, the following conclusions can be drawn:

1. The impact of domestic violence is divided into 2 (two) forms,

namely physical and psychological impacts. Physical impacts are categorized as various impacts that are felt sensorily, such as: beatings or murder. Meanwhile, psychological impacts are categorized as consequences that are felt mentally, such as: mental disorders or trauma.

## CONCLUSION

In the view of maqashid sharia, acts of domestic violence have an impact on the goals of maqashid sharia. First, from a religious perspective, acts of domestic violence weaken a person's faith. Acts of domestic violence make a person not grateful for the blessings that God has given. Second, from the perspective of preserving the soul. A person who is a victim of domestic violence will experience a traumatic experience so that his or her mental health will be disturbed. Third, from the perspective of maintaining reason, someone who experiences domestic violence tends to be unable to think neutrally. This is due to disturbed mental health so that the victim becomes gloomy and lacks self-confidence. Fourth, from the perspective of caring for offspring, it is not uncommon for domestic violence within the family to also have an impact on the child's physical and psychological health. Fifth, in terms of maintaining assets. Domestic violence is generally triggered by economic problems. However, apart from that, domestic violence also has a significant impact on the economy.

## REFERENCE

- Ahmad Imam Mawardi, *Fiqh Minoritas: Fiqh Al-Aqalliyat Dan Evolusi Maqashid Al-Syari'ah Dari Konsep Ke Pendekatan*. Yogyakarta: LkiS, 2010.
- Al-Munawwir, *Kamus Arab-Indonesia Terlengkap: Ahmad Warson Munawwir*, Surabaya: Pustaka Progresif, 1997.

- Ali Mutakin, *Teori Maqāṣid Al-Syarī'ah Dan Hubungannya Dengan Metode Istinbath Hukum*, *Kanun Jurnal Hukum* 19 (3): 551, 2017.
- Diyan Putri Ayu, *Tinjauan Maqashid Syari'ah Terhadap Akibat Tindakan Marital Rape Dalam UU No. 23 TH 2014 dan RKUHP, Al-Manhaj: Hukum Dan Pranata Sosial Islam* 1 (1): 248, 2017.
- Fazlurrahman, *Islam, Alih Bahasa Ahsin Muhammad*, Bandung: Balai Pustaka, 1984.
- Jāser Audah, *Al-Maqāṣid Untuk Pemula: Alih Bahasa Ali Abdelmonim*, Yogyakarta: SUKA-Press UIN Sunan Kalijaga, 2013.
- Jasser Auda, *Maqāṣid Al-Syarī'ah as The Philosophy of Islamic Law' Di Hadapan Majelis Keilmuan Islam Qatar*, London, 2007.
- , *Maqāṣid Al-Shari'ah as Philosophy of Islamic Law: A System Approach*, Herndon: The International Institute of Islamic Thought, 2010.
- , *Membumikan Hukum Islam Melalui Maqasid Syariah, Alih Bahasa Rosidin Dan AliAbd El-Munim*, Bandung: Mizan, 2015.
- , *Membumikan Hukum Islam Melalui Maqasid Syariah*, Jakarta, 2019.
- Komnas Perempuan, *Laporan Catatan Tahunan Komnas Perempuan*, Januari, 2023.
- Laila Afni Rambe, *Islamic Law Review on Use of Go-Pay in Payment of Zakat*, *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 3 (2): 148, 2020.
- , *Maqashid Syariah Approach on The PMD in PT BTPN Syariah Rantau Prapat Nort Sumatera*, *Qonun Iqtishad EL Madani Journal* 1 (1): 5, 2022.
- Marlia Milda, *Marital Rape Kekerasan Seksual Terhadap Istri, PT. Lkis Pelangi Askara*. Yogyakarta, 2017.
- Muhammad Syalabi, *Al-Makhdal Fi Ta'rif Bi Al-Fiqh Al-Islami*, Beirut: Dār Al-Nahdah al-Arabiyyah, 1969.
- Nurhayati dan Ali Imran Sinaga, *Fiqh Dan Ushul Fiqh*, Depok: Prenadamedia Group, 2017.
- Suparman Usman dan Itang, 2015, *Filsafat Hukum Islam*, Serang: Laksita Indonesia, 2015.
- Tri Andrisman, *Hukum Pidana Asas-Asas Dan Dasar Aturan Hukum Pidana Indonesia*, Bandar Lampung: UINLA, 2007.
- Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga.*
- Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga.*
- Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga Pasal 1.*
- Yudian Wahyudi, *Ushul Fikih Versus Hermeneutika Membaca Islam Dari Kanada Dan Amerika*. Yogyakarta: Pesanten Nawesea Press, 2010.