



## The Contemporary *Maqāṣid* Sharia Perspective on Sexual Violence Provisions in the Indonesian Law Number 12 Year 2022

Muhammad Iqbal Juliansyahzen<sup>1\*</sup>, Ocktoherrinsyah<sup>2</sup>

<sup>1\*</sup> State Islamic University (UIN) Prof. K.H. Saifuddin Zuhri Purwokerto  
Ahmad Yani Street, 40A, Purwokerto, Banyumas, Central Java, Indonesia

<sup>2</sup> State Islamic University (UIN) Sunan Kalijaga Yogyakarta  
Laksda Adisucipto Street, Caturtunggal, Sleman, Yogyakarta

Email: <sup>1</sup>iqbalzen@uinsaizu.ac.id, <sup>2</sup>rinsya@yahoo.com

---

Submitted	: 2022-10-13	Accepted	: 2022-11-21
Revision	: 2022-11-16	Publish	: 2022-11-25

---

**Abstract:** The problem of sexual violence is in the spotlight of various groups because it has a multidimensional impact. Various efforts have been made to guarantee and protect the rights of victims. One of these efforts is the presence of Law Number 12 of 2022 concerning the Crime of Sexual Violence. This study aims to analyze the substance of the law and its compatibility with Sharia principles. This type of research is qualitative with a juridical-philosophical approach with the Jasser Auda's perspective on *Maqāṣid* Sharia. The content analysis (content-analysis) is used to examine the content of the law in depth and its suitability with the theory. This study concludes that the concept of sexual violence contained in Law 12 of 2022 is in accordance with *Maqāṣid* Sharia, mainly in six respects, namely *ḥifz al-dīn* (the preservation of religion), *ḥifz al-nafs* (the preservation of the soul), *ḥifz al'aql* (the preservation of mind), *ḥifz al-nasl* (the preservation of offspring), *ḥifz al-māl* (the preservation of property), and *ḥifz al-'ird* (the preservation of honor). This is based on the basic principles of *maqāṣid* Sharia which emphasizes morality, openness, development, humanity, and human rights.

**Keywords:** Jasser Auda, *Maqāṣid* Sharia, Sexual Violence, the TPKS Law.

**Abstrak:** Problem kekerasan seksual menjadi sorotan berbagai kalangan karena memiliki dampak yang multidimensi. Berbagai upaya telah dilakukan untuk menjamin dan melindungi hak-hak korban. Salah satu upaya tersebut adalah dengan hadirnya Undang-Undang No. 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual. Penelitian ini bertujuan untuk menganalisis substansi UU dan kesesuaiannya dengan prinsip Sharia. Jenis penelitian ini adalah kualitatif dengan pendekatan yuridis-filosofis. Adapun teori yang digunakan adalah *Maqāṣid* Syariah Jasser Auda. Peneliti menggunakan analisis konten (content-analysis) untuk mengkaji muatan UU secara mendalam dan kesesuaiannya dengan teori yang dibangun. Penelitian ini menyimpulkan bahwa konsep kekerasan seksual yang terdapat dalam UU 12 Tahun 2022 sesuai dengan prinsip *maqāṣid* syariah kontemporer Jasser Auda, terdapat 6 (enam) dimensi *maqāṣid* syariah kontemporer yaitu *ḥifz al-dīn* (menjaga agama), *ḥifz al-nafs* (menjaga jiwa), *ḥifz al'aql* (menjaga akal), *ḥifz al-nasl* (menjaga keturunan), *ḥifz al-māl* (menjaga harta), dan *ḥifz al-'ird* (menjaga kehormatan). Hal ini didasarkan prinsip dasar *maqāṣid* syariah kontemporer Jasser Auda yang lebih menekankan pada moralitas, keterbukaan, pengembangan, kemanusiaan, dan Hak Asasi Manusia.

**Kata Kunci:** Jasser Auda, *Maqāṣid* Syariah, Kekerasan Seksual, UU TPKS

## Introduction

The issue of sexual violence is a matter of serious concern to various groups. Various cases occur in various places and continue to occur from time to time, and even increasing. Sexual violence is an act that is contrary to various norms in human life, including human norms. Therefore, acts of sexual violence are inhumane acts, even though every human being, especially women as parties who are often victims, has the right to protect their human rights and carry out normal activities.<sup>1</sup>

Based on statistical data, the level of sexual violence mostly happens to women. Data released by the Ministry of Women's Empowerment and Child Protection (Kemenpppa) of the Republic of Indonesia, that until the beginning of 2022 the number of sexual violence was 18,698 cases, 17,140 of which occurred in women and the remaining 3,023 were men. This number, if explored more deeply, occurs in various places including households, workplaces, educational institutions, public facilities, and so on. However, most of the problems of violence occur in the household.<sup>2</sup> Moreover, in general, the problem of sexual violence increased during the COVID-19 pandemic.<sup>3</sup>

The problem of violence that often afflicts women is caused by several things, one of which is the issue of inappropriate religious understanding. Muslim society tends to still rely on gender-discriminatory religious understanding. The interpretation of the beginning of human creation is seen as one of the roots of the emergence of a gender-biased understanding. Women are seen as a complement to the presence of men on earth which is based on the QS. An-Nisa [4]: 34.<sup>4</sup> In addition, this problem of violence also occurs due to the value system and culture in society that positions women as second-class beings, subordinated, weak, marginal beings who are under the power of men.<sup>5</sup> Understanding gender bias in its development is disseminated through social media.<sup>6</sup>

<sup>1</sup> Charlotte Bunch, 'Women's Rights as Human Rights: Toward a Re-Vision of Human Rights', *Human Rights Quarterly* 12, no. 4 (1990): 486, <https://doi.org/10.2307/762496>; Susana T. Fried, 'Violence against Women', *Health and Human Rights* 6, no. 2 (2003): 91, <https://doi.org/10.2307/4065431>; Helen Intania Surayda, 'Perlindungan Hukum terhadap Korban Kekerasan Seksual Dalam Kajian Hukum Islam', *Jurnal Ius Constituendum* 2, no. 1 (5 April 2017): 26, <https://doi.org/10.26623/jic.v2i1.543>.

<sup>2</sup> 'SIMFONI-PPA', accessed 5 July 2022, <https://kekerasan.kemenpppa.go.id/ringkasan>.

<sup>3</sup> S. Nanthini and Tamara Nair, 'COVID-19 and the Impacts on Women' (S. Rajaratnam School of International Studies, 2020), 4-5, <https://www.jstor.org/stable/resrep26875>; World Health Organization, 'Covid-19 and Violence Against Women: What the Health Sector/System Can Do' (World Health Organization, 2020), <https://www.jstor.org/stable/resrep28231>; Caroline Bettinger-Lopez, Alexandra Bro, and Renu Nargund, 'A Double Pandemic: Domestic Violence in the Age of COVID-19' (Council on Foreign Relations, 2020), <https://www.jstor.org/stable/resrep29816>.

<sup>4</sup> Muhammad Iqbal Juliansyahzen, 'Otoritarianisme Pemahaman Keagamaan: Melacak Akar Kekerasan Terhadap Perempuan Dalam Rumah Tangga', *Yinyang: Jurnal Studi Islam Gender Dan Anak*, 17 June 2021, 50-51, <https://doi.org/10.24090/yinyang.v16i1.3999>; Bani Syarif Maula, 'Keniscayaan Pembacaan Ulang Tafsir Agama Untuk Menegaskan Kesetaraan Gender Dalam Kehidupan Keluarga Dan Masyarakat Islam', *Yinyang: Jurnal Studi Islam Gender Dan Anak* 9, no. 1 (15 January 2014): 122-23. <https://doi.org/10.24090/yinyang.v16i1.3999>; Bani Syarif Maula, 'Keniscayaan Pembacaan Ulang Tafsir Agama Untuk Menegaskan Kesetaraan Gender Dalam Kehidupan Keluarga Dan Masyarakat Islam', *Yinyang: Jurnal Studi Islam Gender Dan Anak* 9, no. 1 (15 January 2014).

<sup>5</sup> Marchelya Sumera, 'Perbuatan Kekerasan/Pelecehan Seksual Terhadap Perempuan', *LEX ET SOCIETATIS* 1, no. 2 (10 May 2013): 39, <https://doi.org/10.35796/les.v1i2.1748>.

<sup>6</sup> Ansori Ansori and Muhammad Iqbal Juliansyahzen, 'The Contestation of the Family Law Discourse in the Digital Age: Islam, State, and Gender', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (27 June 2022): 244-72, <https://doi.org/10.22373/sjhk.v6i1.9128>. how the struggle for the meaning of gender equality in family law occurs on social media, and why some digital activists in Indonesia have a dualistic understanding of religious law and state law in the context of family law. This is a qualitative study employing approaches from discourse analysis. Utilizing Bourdieu's theory, the researcher examines the contestation of gender relations discourse on social media. There are two groups with opposing viewpoints: those who oppose equality and those who support it. This study demonstrates that each gender narrative agent develops the discourse about the relationships between men and women using a variety of media, including YouTube, Instagram, Facebook, and an official website. Each has a large number of social media followers. There are numerous ways to disseminate discourse, including lectures, short videos, quotations, images, and scholarly articles. In the context of its relationship to state law, the

A number of regulations have actually been attempted to protect and fulfill the rights of women. In 2004, Law Number 23 concerning the Elimination of Domestic Violence (PKDRT) was enacted. The enactment of the law actually has a big impact on victims as an effort to provide legal protection for them. This is also seen as a breakthrough step towards regulating the issue of violence and the dynamics of the proceedings.<sup>7</sup> However, the problem of violence, especially in the household, still occurs and efforts to eliminate violence become a difficult target to realize. The ideals of the PKDRT Law and gaps in the marriage law that open up opportunities for violence, including stereotyping issues, as well as the concept of providing a living with the wife's obedience are separate problems.<sup>8</sup>

Therefore, along with social changes, the demands of the times, and the content that has not been specifically regulated regarding the provisions and types of sexual violence including in the household/marriage, Law Number 12 of 2022 concerning the Crime of Sexual Violence (UU TPKS) was born. The law is a response to the reality of sexual violence that occurs in society and social changes that have not been regulated in the previous law. There are at least 19 types of sexual violence described in the law. In addition, the law also regulates punishment or punishment for perpetrators.

However, the presence of the TPKS Law is not without problems. The draft of this law has actually been started since 2016 but can only be realized in 2022. This means that it will take 6 years to arrive at the final stage. In addition, the composition of women as members of parliament is not directly proportional to the easy process. This is not only because of the power relation factor, but also due to the pros and cons of the substance of the law. Those who agreed, argued that in addition to increasing levels of violence, problems and types of violence had also developed, especially in the era of social media and openness to globalization.<sup>9</sup>

Meanwhile, those who are against are of the view that the Law indirectly provides legitimacy for acts of free sex.<sup>10</sup> The refusal was spearheaded by an Islamic Party. According to them, there are articles that are contrary to sharia principles. For example regarding an act of sexual violence which must have an element contrary to the will of the victim, as meant in Article 4. This explanation then

---

first group tends to place the state in an overbearing role. This is understood due to the attitude of the state, which governs a number of matters not covered by the Shari'a. In contrast, the second group views religion and state law as mutually beneficial and therefore inseparable. There are a number of conclusions based on a variety of evidence, one of which is that religious authority in the media is fractured based on religious group affiliation, particularly in the family law debate. The problem of authority in the media is no longer defined by a character's scientific aptitude but by who has the most control over the media and the largest number of followers. In addition, sources of religious discourse, particularly family law, have shifted to a variety of media. In order to determine an authority's perspective in the media, it is vital to consider the fundamental values of Islam and perspectives that do not conflict with religion and the state." , "container-title": "Samarah: Jurnal Hukum Keluarga dan Hukum Islam", "DOI": "10.22373/sjhk.v6i1.9128", "ISSN": "2549-3167", "issue": "1", "language": "en", "license": "Copyright (c) 'UU PKDRT, Antara Terobosan Hukum Dan Fakta Pelaksanaannya', accessed 4 June 2022, <https://ditjenpp.kemendikham.go.id/>.

<sup>8</sup> Alfitri Alfitri, 'Protecting Women from Domestic Violence: Islam, Family Law, and the State in Indonesia', *Studia Islamika* 27, no. 2 (3 August 2020): 273-307, <https://doi.org/10.36712/sdi.v27i2.9408>. the elimination of violence in the household is still an elusive target in Indonesia. For example, according to the National Commission on Anti Violence Against Women, a large number of Muslim divorces in the Religious Courts have involved domestic violence. This article discusses the opportunities and challenges for eliminating domestic violence in Indonesian Muslim society. Employing both normative and socio-legal analysis, it finds that the state is unable to resolve the existing conflict between the requirements of the Law - which oblige the state to amend conflicting legislation - and the provisions of both civil and Islamic marriage laws, which create the potential for violence against women in the household. These include gender role stereotypes, the fuzziness of the obedience concept (nushūz

<sup>9</sup> Adiyana Adam, 'Pro Kontra Rancangan Undang Undang Penghapusan Kekerasan Seksual', *AL-WARDAH: Jurnal Kajian Perempuan, Gender Dan Agama* 15, no. 1 (27 December 2021): 4, <https://doi.org/10.46339/al-wardah.v15i1.632>.

<sup>10</sup> Andi Sri Ratu Aryani, 'Analisis Polemik Pengesahan RUU Tindak Pidana Kekerasan Seksual (TPKS)', *Najwa: Jurnal Muslimah dan Studi Gender* 1, no. 1 (26 January 2021): 10.

creates an understanding that if an act is based on one's own will, then it is the same as opening up space for the act of adultery to be committed on the basis of the willingness of each each party or person.

The interpretation of articles that are contrary to sharia principles needs to be reviewed through a more comprehensive and contemporary approach. Therefore, the researcher analyzed analytically the TPKS Law through the *maqāṣid* Sharia approach as the basic value base in Islam. How does the contemporary *maqāṣid* Sharia perspective look at the position and substance of the TPKS Law and efforts to provide protection for one's sexual rights? In answering this question, the researcher used a juridical-philosophical approach with Jasser Auda's *maqāṣid* concept as a representation of contemporary *maqāṣid* Sharia perspective.

### Jasser Auda's View on Maqāṣid Sharia

The concept of *maqāṣid* Sharia, which is actually generally understood as the intent and purpose of sharia, in this case Islamic law or Islam in general. Linguistically, "*maqāṣid*" is a plural form of the word "*maqṣid*" which means a place of destination or a place to face. In addition, *maqāṣid* means the straight path, this is based on the Surah an-Nahl [16]: 9 which means "*It is Allah who shows the straight path and in between there is a deviant (path).*" In addition to this meaning, *maqāṣid* also has the meaning of fair or middle. This is based on the QS Luqman [31]: 19 which means "*Be fair (middle) in walking and soften your voice.*" Meanwhile, the word Sharia is religion, belief, way, and Sunnah.<sup>11</sup>

Meanwhile, according to the term, *uṣūliyyn* defines *maqāṣid* Sharia as a number of meanings, goals, and privileges set out in Sharia law.<sup>12</sup> Auda defines *maqāṣid* as "*wisdom behind the rulings.*"<sup>13</sup> In detail, it can be understood in a general and specific sense. As for the general sense that *maqāṣid* Sharia refers to objectives based on Sharia, in this case it refers to something that is intended by legal verses and legal traditions. Meanwhile, at a special level, it is the substance to be achieved by a legal formulation.<sup>14</sup> Syaṭībī divides *maqāṣid* in terms of its objectives into two, namely *maqāṣid* Sharia and *maqāṣid mukallaf*.<sup>15</sup> In addition to insiders, outsiders also provide a similar definition, for example Hallaq, that according to him, *maqāṣid* is a "*universal aim of the law.*"<sup>16</sup>

Historically, the concept of *maqāṣid* has been pioneered by Abū Ḥāmid al-Ghazālī, 'Izz al-Dīn 'Abd al-Salām, and Al-Syaṭībī.<sup>17</sup> Aniq added that conceptually, it was Imam Al-Syaṭībī who systematically conceptualized *maqāṣid* in his work entitled *al-Muwāfaqāt*.<sup>18</sup> In the contemporary

<sup>11</sup> Jamaluddin Atiyyah, *Naḥwa Tafīl Maqāṣid al-Syarī'ah* (Damaskus: Dar al-Fikr, 2001); Muhammad Sa'd bin Aḥmad bin Mas'ūd Alyūbī, *Maqāṣid Asy-Syarī'ah al Islāmiyyah Wa 'Ilāqatuhā Bi al Adillati Asy-Syariyyah* (Arab Saud: Dar Hijrah Li An-Nasyr wa Tauzi', 1998), 25–29.

<sup>12</sup> Ahmad Fathan Aniq, 'Maqāṣid al-Syarī'ah wa Makānatuhā fī Istīnbat al-Aḥkām al-Syāriyyah', *Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam* 12, no. 1 (2009): 3–4, <https://doi.org/10.15642/alqanun.2009.12.1.1-24>; Mohammad Hashim Kamali, *Maqāṣid Al-Shari'ah, Ijtihad and Civilisational Renewal* (London: The International Institute of Islamic Thought International Institute of Advanced Islamic Studies (iais) Malaysia and The International Institute of Islamic Thought, 2012), 2.

<sup>13</sup> Jasser Auda, *Maqāṣid Al-Shari'ah as Philosophy of Islamic Law; A Systems Approach* (London and Washington: The International Institute of Islamic Thought, 2007), 2.

<sup>14</sup> Kamali, *Maqāṣid Al-Shari'ah, Ijtihad and Civilisational Renewal*, 2; Ghofar Shidiq, 'Teori Maqashid Al-Syari'ah Dalam Hukum Islam', *Majalah Ilmiah Sultan Agung* 44, no. 118 (23 October 2022): 119.

<sup>15</sup> Abu Ishaq Al-Syaṭībī, *Al-Muwāfaqāt Fī Uṣūl al-Syarī'ah*, vol. II (Saudi: Dār Ibn 'Affan, 1997), 5.

<sup>16</sup> Wael B. Hallaq, 'Maqāṣid and the Challenges of Modernity', *Al-Jami'ah: Journal of Islamic Studies* 49, no. 1 (29 June 2011): 3, <https://doi.org/10.14421/ajis.2011.49.1-31>.

<sup>17</sup> Kamali, *Maqāṣid Al-Shari'ah, Ijtihad and Civilisational Renewal*, 6.

<sup>18</sup> Aniq, 'Maqāṣid al-Syarī'ah', 4.

era of the 20th century, figures such as Ibn Ashur, ‘Allal al-Fasi, al-Qaraḍawi, al-Zuhayli and others emerged. The conceptual building of *maqāṣid* develops and is systematic and establishes a number of conditions for *maqāṣid*.<sup>19</sup> A contemporary *maqāṣid* figure emerged, namely Jasser Auda.

Auda is the director and founder of the London-based *Maqāṣid* Institute. The Institute was founded in 2005. His doctoral education was completed at two leading universities, namely the University of Wales, UK for the study of Philosophy of Islamic Law and the University of Waterloo, Canada for the study of systems analysis.<sup>20</sup> In his childhood, he memorized the al-Qur’an and studied fiqh on halaqah-halaqah at al-Azhar University, Cairo. His monumental works include *Maqāṣid al-Shariah: Philosophy of Islamic Law A Systems Approach* (Auda, 2007) and *Maqāṣid al-Sharia A Beginners Guide*,<sup>21</sup> *How do we Realize Maqāṣid al-Shariah in the Shariah?*, and others.

The *Maqāṣid* Auda concept shifts the classical *maqāṣid* concept which is still oriented towards safeguarding. He tries to reconstruct the concept of *maqāṣid* which is more elastic, open, and oriented towards more universal human values.<sup>22</sup> The classical *maqāṣid* concept which is more preventive in nature such as protecting religion, soul, mind, lineage, and property is oriented more universally by Auda based on the concept of development and development. In the context of contemporary *maqāṣid* development, Auda explores from the basis of safeguarding to development such as protecting the practice and harmony of religious communities, protecting the family, increasing concern for family institutions, improving thinking and intellectual patterns, avoiding boredom of thinking and creativity, maintaining and protecting human dignity, and improving welfare and social justice.<sup>23</sup>

The principles of openness, intention, linkage, and integration are the principles inherent in the epistemological building of *Maqāṣid* Auda.<sup>24</sup> Contemporary problems are actually not enough with one scientific discipline and view, but it is necessary to see various points of view on an issue. Therefore, Auda emphasizes the holistic principle in examining a problem and refers to general principles and looking for common ground.<sup>25</sup> In addition to this concept, the argument for Auda’s election is also based on the reality that Auda lives in the midst of change and globalization. In addition, Auda’s ability to dialogue and link between various scientific paradigms, both Islamic sciences such as tafsir, fiqh, hadith, kalam, with social sciences, humanities and modern science.<sup>26</sup>

## Debate on Law Number 1 Year 2022

Based on data from the National Commission on Violence against Women, the problem of violence shows an increase. The number of violence that occurred during the thirteen years between 2006 and 2019 amounted to almost a quarter of the total violence cases, or as many as 93,960 cases out

<sup>19</sup> Kamali, *Maqasid Al-Shari’ah, Ijtihad and Civilisational Renewal*, 6.

<sup>20</sup> Abbas Arfan, ‘Maqasid al-Syari’ah sebagai Sumber Hukum Islam: Analisis terhadap Pemikiran Jasser Auda’, *Al-Manahij: Jurnal Kajian Hukum Islam* 7, no. 2 (23 December 2013): 185, <https://doi.org/10.24090/mnh.v7i2.563>.

<sup>21</sup> Jasser Auda, *Maqasid Al-Shariah: A Beginner’s Guide (Al-Maqasid Untuk Pemula)*, trans. ‘Ali Abdelmon’im (Yogyakarta: UIN Suka Press, 2013).

<sup>22</sup> Muhammad Iqbal Juliansyahzen, ‘Good Governance Perspektif Maqasid Asy-Syaari’ah Kontemporer’, *AKADEMIKA: Jurnal Pemikiran Islam* 23, no. 1 (18 August 2018): 69, <https://doi.org/10.32332/akademika.v23i1.1195>.

<sup>23</sup> Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*, 1–6.

<sup>24</sup> Auda, 34.

<sup>25</sup> Kamali, *Maqasid Al-Shari’ah, Ijtihad and Civilisational Renewal*, 31.

<sup>26</sup> M. Amin Abdullah, ‘Epistemologi Keilmuan Kalam Dan Fikih Dalam Merespon Perubahan Di Era Negara-Bangsa Dan Globalisasi (Pemikiran Filsafat Keilmuan Agama Islam Jasser Auda)’, *Media Syari’ah : Wahana Kajian Hukum Islam Dan Pranata Sosial* 14, no. 2 (30 October 2012): 126, <https://doi.org/10.22373/jms.v14i2.1871>.

of the total reported violence data of 400,939. This means that every day there are at least 20 cases of violence. The next problem, it turns out that most of the violence actually occurs in the domestic sphere, followed by the realm of the community, and the state.<sup>27</sup>

The high number of violence is also not in line with the process of resolving cases of violence. Forced marriage, for example, is one of the solutions to cases against victims of sexual violence. This can lead to further problems. A rape victim is married to the perpetrator. This will have a more serious impact on the victim's psychology and have the potential to experience violence problems for the second time and endanger their reproductive health.<sup>28</sup> Therefore, the presence of a law regulating the issue of victims is very important.

The TPKS Law has a long journey. At the very least, it will take 6 years to transform into a law. In fact, the drafts and proposals have actually been started since 2012, and were included as one of the DPR's National Legislation Programs (Prolegnas) in 2016. It was a long process, and even stagnated until it received attention and encouragement through the actions of a number of community groups and a number of alliances. They demanded the government through the DPR to immediately ratify the bill in 2018. Due to the encouragement of the masses and actions, the DPR assured that it would ratify it in 2019, after the General Election. In fact, in 2020 this bill was revoked in the National Legislation Program, and re-inserted in 2021.<sup>29</sup>

This long journey cannot be separated from a number of problems, *first*, the public views that the DPR is not serious in resolving and providing protection against problems with high levels of sexual violence. In fact, the legislative process has reached the National Legislation Program in 2016, and has lasted for 3 years and has not yet been completed. *Second*, the arguments regarding the naming of this Draft Law are still debatable or ambiguous. In addition, explanations regarding the limits of sexual violence are considered less clear. *Third*, there are a number of community groups who still reject this bill, because this bill is not in accordance with the principles of Islamic law. The climax, on September 28, 2019 there was a large demonstration in front of the state palace which was attended by various elements of society. Their demand is to refuse the ratification of the bill because it is considered contrary to Islamic law.<sup>30</sup>

The birth of the law is actually a response to the increasing number of sexual violence in society. The process of resolving cases that do not go well and in accordance with humanitarian principles is another factor and reason. There are a number of cases of violence and even problems that are very slow to resolve, even reaching 2 years. Another case, for example, occurred when an honorary teacher experienced a case of violence perpetrated by his leader. The teacher documents the case. However, it was precisely the victims who were reported with suspicion of spreading immoral content. Therefore, the presence of this law is an effort to regulate criminal threats and support and protect victims.<sup>31</sup>

However, there are also those who are against it. The opposing party came from the Prosperous Justice Party/Partai Keadilan Sejahtera (PKS). The arguments put forward are *first*, that the presence

<sup>27</sup> Desti Murdijana et al., 'Risalah Kebijakan Kekerasan Seksual; Stigma Yang Menghambat Akses Pada Pelayanan' (Jakarta: Komnas Perempuan, 2019).

<sup>28</sup> Murdijana et al., 2.

<sup>29</sup> Aryani, 'Analisis Polemik Pengesahan RUU', 5.

<sup>30</sup> Ahmad Badrut Tamam, 'Rancangan Undang-Undang Penghapusan Kekerasan Seksual (RUU PKS) Dalam Perspektif Mashlahah Mursalah', *Annual Conference for Muslim Scholar*, 2019, 850-51, <https://www.ikaundip.org/readmore/29502-menelisik-pro-dan-kontra-ruu-inisiatif-dpr>.

<sup>31</sup> Aryani, 'Analisis Polemik Pengesahan RUU', 10.

of the law has the potential to give birth to acts of adultery that occur freely. This means that if sexual intercourse is carried out on the basis of willingness and mutual liking then it is not included in the category of sexual violence. *Second*, it will have the potential to give birth and develop LGBT practices. *Third*, the presence of this law has the potential to legalize prostitution and abortion, especially if it is carried out on the basis of self-awareness. *Fourth*, rape, sexual slavery and other forms of sexual violence are explained liberally. The principle of liberalization is the basis for rejecting the birth of this Law.<sup>32</sup>

Among the issues and articles that are debated among the public, especially the dynamics of debate in parliament.<sup>33</sup> First, related to the naming of the bill with the Elimination of Sexual Violence. *Second*, the provision of violence in article 1 which explains the meaning of sexual violence. According to article 1, that “sexual violence is every act of humiliating, insulting, attacking, and/or other acts against a person’s body, sexual desire, and/or reproductive function by force, against the will of a person, which causes a person to be unable to give consent in a state of freedom, due to inequality in relations and/or gender relations, which results in or can result in physical, psychological, sexual suffering or misery, economic, social, cultural and/or political harm”.

This article has been in the spotlight quite a lot, as described earlier, the clause “against one’s will” gives rise to the opposite understanding, which is not a problem if it is carried out on the basis of willingness and mutual liking. This understanding seems to imply efforts to legalize sexual behavior outside of a legal marriage. In addition, the interpretation of the clause “*against one’s body, sexual desire*” gives rise to the interpretation that any activity or action against the body that causes sexual stimulation (either heterogeneously, homosexually, or other deviant sexual preferences) and if it is approved, is not considered an act. sexual violence. In fact, such an act in the perspective of Islamic law is an act that violates Islamic law and also contradicts the first precepts of Pancasila.<sup>34</sup>

Based on the explanation, the journey, dynamics, and long process of the bill can finally be passed by parliament on April 12, 2022. Regardless of the pros and cons, the presence of the TPKS Law is oriented not only to advocating for victims of violence, but also as an effort to protect, prevent and recovery of victims of violence. It is also based on empirical facts and quantitative data related to the increasing number of sexual violence in Indonesia.

### Is The TPKS Law Compatible With Sharia?

The basic principle of Sharia is actually to realize the benefit of Muslims in particular, and mankind in general. In addition to realizing benefit, Sharia also aims to protect humanity from harm or misery.<sup>35</sup> Etymologically, Sharia is a path or source of springs. In terms, Sharia is something that was revealed to the Prophet Muhammad in the form of revelation oriented to the benefit of human beings in the world and in the hereafter, which includes aspects of faith, morals, and daily law.

<sup>32</sup> Audra Jovani, ‘Perempuan dan Kebijakan Publik : Urgensi RUU Tindak Pidana Kekerasan Seksual’, *Jurnal Inada: Kajian Perempuan Indonesia di Daerah Tertinggal, Terdepan, dan Terluar* 4, no. 2 (2021): 11, <https://doi.org/10.33541/ji.v4i2.3778>.

<sup>33</sup> Adam, ‘Pro Kontra Rancangan Undang Undang Penghapusan Kekerasan Seksual’, 7.

<sup>34</sup> Ela Khodijah N, ‘RUU Penghapusan Kekerasan Seksual Dalam Melindungi Ketahanan Keluarga Sebagai Institusi Pendidikan Informal (Analisis Wacana Kritis PP Persistri Terhadap RUU Penghapusan Kekerasan Seksual)’, *Al - Mujaddid: Jurnal Ilmu-Ilmu Agama* 2, no. 1 (30 June 2020): 7–8, <https://doi.org/10.51482/almujaddid.v2i1.34>.

<sup>35</sup> Muḥammad Saïd Ramaḍan al Būṭī, *Ḍawābiṭ al Maṣlaḥah Fī al Syarī’ah al-Islāmiyyah* (Mesir: Muassasah al-Risalah, 1965), 23; Wahbah al Zuhaili, *Naẓariyyah al Ḍarūrah Al-Syariyyah* (Beirut: Muassasah al Risalah, 1985), 49–50.

Furthermore, the formulation of Islamic law cannot be separated from the principle of humanity itself. This is also a Sharia mandate to promote and protect human rights. Every rule and issue that concerns the effort to suppress and override human rights, then in fact these rules and regulations are contrary to Islamic law. Islam teaches universal values that depart from the principle of respect and responsibility for human values. The differences that exist between humans are not justifications for committing acts that violate the order of life among others.<sup>36</sup>

Along with the times, human problems are growing and various. Another issue of serious concern is the issue of sexual violence. This has actually happened for a very long time, and is a classic problem in the history of humanity. As the author described earlier, the level of sexual violence in Indonesia in the last decade has actually shown an increase. There are many factors and supports the height of the problem. Starting from changing values, relationships, social media, and so on. Regardless of the causative factor, the government has made efforts to reduce the number of violence by issuing the TPKS Law.

Substantially, this law is very progressive. This can be seen from the development of the types of sexual violence and the efforts to deal with them. In addition, the basic principle that is used as the philosophical basis for the formation of this law is that acts of sexual violence are actually acts that are contrary to divine and human values. This is as explained in the weighing section (b). This is because humans are actually God's creatures who get a high position. Any action that violates this principle is the same as injuring God.

In addition to efforts to respect human dignity, the basic principles of this law are to eliminate gender discrimination and bias, efforts to provide kindness to victims, justice, benefit, and legal certainty (Article 2). If we examine a number of principles in more detail, none of the principles of regulating sexual violence acts are contrary to sharia. Provisions regarding non-discrimination, for example, that all perpetrators who violate the rules are obliged to take responsibility for their actions. There is no specialization of individuals or groups on the issue of violence.

In addition, the TPKS Law also raises the principle of gender equality. This is actually relevant to the basic principle of Islam which places the relationship between men and women in a balanced position. A number of normative foundations show the principle of equality, for example in QS. Al-Baqarah [2]: 187 that a woman is a garment for her husband, and a man is a garment for his wife. Another verse asserts that the difference between men and women is actually only due to their piety. All of these things refer to the mission of the Islamic religion, namely to give mercy to the universe, realize the benefit, and eliminate all forms of oppression, inequality, and injustice.<sup>37</sup>

The problem of inequality in gender relations in the social context of Muslim society is caused by many factors. The domination of patriarchal culture is the root of violence and discrimination against women.<sup>38</sup> Besides, religious understanding also has a strong influence in constructing

<sup>36</sup> Iffatin Nur, Syahrul Adam, and M. Ngizzul Muttaqien, 'Maqāsid Al-Sharī'at: The Main Reference and Ethical-Spiritual Foundation for the Dynamization Process of Islamic Law', *AHKAM: Jurnal Ilmu Syariah* 20, no. 2 (30 December 2020): 336–38, <https://doi.org/10.15408/ajis.v20i2.18333>.

<sup>37</sup> Khariri Khariri, 'Kesetaraan Gender Dalam Perspektif Islam: Reinterpretasi Fiqih Wanita', *Yinyang: Jurnal Studi Islam Gender dan Anak* 4, no. 1 (2009): 27; Akrimi Maswah, 'Reinterpretasi Ayat-Ayat Tentang Relasi Gender Dalam Keluarga (Analisis Terhadap Penafsiran Edip Yuksel Dkk)', *Shuhuf* 7, no. 2 (2014): 303–28; Etin Anwar, *Gender and Self in Islam*, 1 edition (London: Routledge, 2006); Asasriwarni Asasriwarni, 'Gender Dalam Perspektif Hukum Islam', *Kafa'ah: Journal of Gender Studies* 2, no. 2 (12 July 2012): 1-12-12, <https://doi.org/10.15548/jk.v2i2.48>.

<sup>38</sup> Mufidah Cholil, 'Complexities in Dealing with Gender Inequality: Muslim Women and Mosque-Based Social Services in East



gender-biased religious understandings. This doctrine of inequality in relations is due to an inaccurate understanding of the concept of human creation, namely QS. An-Nisā' [4]: 1. This verse actually speaks in general, not specifically about the origin of the creation of women.<sup>39</sup> According to Nasaruddin Umar, an understanding of the origin of women begins with an understanding of “*nafs wāhidah*”. Generally, scholars interpret the word with Prophet Adam, so that Prophet Adam became the beginning of creation and then from him was born Hawa.<sup>40</sup> This interpretation seems to position women as second class beings, part of other creatures.<sup>41</sup> In fact, Islam exists to raise the degree of human dignity, both men and women.

The principles of gender equality and non-discrimination are in line with the value principles brought by Sharia. The problem that occurs in society related to gender relations is that this teaching comes from the west and must be opposed. Gender equality is not to dominate women over men or vice versa, but this is an effort to provide fair treatment to men and women. In many cases, discrimination and unfair treatment often occur to women, both in family life and in the public sphere.<sup>42</sup>

In addition to these principles, the principles of expediency, justice, and legal certainty of course lead to the end of human values. The birth of the TPKS Law is of course a normative argument to ensure the protection of victims. Previously, the principle of protection did not have a solid foundation, including in terms of resolving cases of sexual violence. So far, there has been a problem solving sexual violence cases. Forced marriage (Article 4), for example, victims of sexual violence are forced to marry the perpetrator who has committed immoral acts to him. The solution by forcing the victim to marry the perpetrator is not actually able to solve the problem, it actually adds to the psychological burden of the victim. Therefore, forced marriage is included in one form of sexual violence in the TPKS Law. This is in accordance with the fiqh rule that “*al-ḍararu lā yuzālu bi al-ḍarari*” that eliminating evil does not involve harm.<sup>43</sup> Forcing marriage is not the best way for victims of sexual violence. This does not rule out the possibility that because of the compulsion of the victim, the perpetrator actually committed other acts of violence. Apart from that, it is also due to psychological problems that are difficult for victims to erase the suffering they experience.

Thus, the basic principles of the TPKS Law are in accordance with sharia principles, namely maintaining and protecting human rights. Apart from the pros and cons, the main orientation of the TPKS Law is to realize the benefit. The group that opposes the TPKS Law with accusations of legalizing adultery does not have a logical argument. Even though the issue of adultery has been regulated

Java Indonesia', *Journal of Indonesian Islam* 11, no. 2 (5 December 2017): 463–64, <https://doi.org/10.15642/JIIS.2017.11.2.459-488>.

<sup>39</sup> Mahbub Ghozali, 'Ambiguitas Tafsir Feminis Di Indonesia', *Yinyang: Jurnal Studi Islam Gender Dan Anak* 15, no. 1 (12 May 2020): 82–83, <https://doi.org/10.24090/yinyang.v15i1.3641>. This study aims to identify some of the trends generated by feminist reviewers in Indonesia by limiting a number of figures, namely M. Qurasih Shihab, Nasaruddin Umar, Husein Muhammad, Faqihuddin Abdul Kodir, Musdah Mulia, and Zaitunah Subhan by using Gadamer's hermeneutic method. This study found that there were two trends by the feminist reviewers. First, the tendency of interpretation which involves the discourse of the text to find the main idea (world view)

<sup>40</sup> Nasaruddin Umar, 'Perspektif Jender Dalam Islam', *Paramadina* I, no. 1 (Desember 1998): 103.

<sup>41</sup> Faiq Tobroni, 'Kesetaraan Gender: Panggilan Nurani Membebaskan "Manusia Yang Dianggap Kelas Dua"', *Musāwa Jurnal Studi Gender Dan Islam* 9, no. 2 (30 July 2010): 299, <https://doi.org/10.14421/musawa.2010.92.297-304>.

<sup>42</sup> H. Hanafi, 'Teologi Penciptaan Perempuan: Rekonstruksi Penafsiran Menuju Kesetaraan Gender', *BUANA GENDER: Jurnal Studi Gender Dan Anak* 1, no. 2 (30 December 2016): 153, <https://doi.org/10.22515/bg.v1i2.408>; Compare with Rosa De Jorio, 'Between Dialogue and Contestation: Gender, Islam, and the Challenges of a Malian Public Sphere', *The Journal of the Royal Anthropological Institute* 15 (2009): S95–111.

<sup>43</sup> Abdullah bin Said al Lahji, *Īdōh Al-Qawā'id al-Fiqhiyyah* (Mekkah: Mathbaah al Madani, 1388), 37; Imam Tajiddin 'Abdul Wahhab bin Ali ibn Abd al-Kafi al Subki, *Al-Asybah Wa al-Nazāir*, vol. I (Beirut: Dar al-Kūtib al-Ilmiyyah, 1991), 41.

by the Criminal Code (KUHP).<sup>44</sup> It is impossible, the Indonesian government issues regulations that allow adultery, while Indonesia accommodates as a country that believes in the one and only God where one of the prohibitions for religious people is to commit adultery.

### Jasser Auda's Sharia Maqāṣid Perspective on the TPKS Law

The principle of Auda's perspective *maqāṣid* development is oriented towards realizing a wider benefit. This principle is based on the realization that sharia actually has a broad reach. The classical *maqāṣid* paradigm, which is based on the principle of safeguarding, has been developed to be more dynamic and contextual. Auda emphasizes the principle of development based on the protection of Human Rights which is based on the needs and problems faced by humans in the contemporary dimension. While classical *maqāṣid* emphasizes more individual-personal care, Auda's *maqāṣid* offers a concept that pays more attention to social-society aspects.<sup>45</sup> Thus, the *maqāṣid* building that is more holistic, humanist, and universal is an effort that continues to be developed in formulating Islamic law and contemporary rules.

The birth of the TPKS Law is a breath of fresh air for efforts to protect human rights and dignity. The TPKS Law is not only preventive in nature, such as preventing all acts of sexual violence, enforcing the law for perpetrators, handling and assisting victims of violence, but also increasing development, such as creating a friendly community environment, without sexual violence, in addition to expanding the criteria of sexual violence. There are at least 20 types of sexual violence enshrined in the TPKS Law in article 4, paragraph 1 and 2.

The expansion of types and criteria for violence is a response to rapid social change. Media openness is also one of the reasons for the expansion of the criteria for violence. In fact, there are types of violence based on electronics. Article 4 paragraph 1 explains in more detail the types of sexual violence, namely non-physical sexual harassment, physical sexual harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence.

In addition, the provisions on the types of sexual violence are also explained in the next paragraph (Article 4, paragraph 2) which include: rape; lewd acts; sexual intercourse with children, including exploitation of children; violation of decency against the will of the victim; pornography involving children or pornography that explicitly contains sexual violence and exploitation; forced prostitution; the crime of trafficking in persons is intended for sexual exploitation; sexual violence in the domestic sphere; money laundering crime whose original crime was sexual violence; as well as other criminal acts that are expressly stated as criminal acts of sexual violence as regulated in the provisions of laws and regulations.

In more detail, the elaboration of the provisions on sexual violence in Auda's *maqāṣid* Sharia as an effort to safeguard and maintain human interests<sup>46</sup>, is as follows:

- 1) Protection and maintenance of religiosity and the role of religion (*ḥifẓ al-dīn*)

Religion is central in human life. The involvement of religion in solving human problems is

<sup>44</sup> Aryani, 'Analisis Polemik Pengesahan RUU', 10.

<sup>45</sup> Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*, 21-24.

<sup>46</sup> Auda, 3.

something that must be done. In addition, the safeguarding of the right to religion and to practice one's beliefs must continue to be pursued. In the context of religion in the TPKS Law, the Regional Technical Implementation Unit for the Protection of Women and Children (UPTD PPA) cooperates with the Ministry of Religious Affairs in providing access to practice their religion in a calm and peaceful manner (Article 73). Assistance through the Ministry of Religion is also carried out as an effort to prevent and monitor the potential for sexual violence. In addition to the role of government, the TPKS Law also mandates families to take preventive measures by strengthening education in the family, including in the religious aspect. The role of religion is needed to create a friendly environment, free from sexual violence. Religious protection not only provides access and assistance for victims to carry out their worship according to their religion, but also builds a friendly environment based on religious orders.

2) Protection and maintenance of the soul (*hifz al-nafs*)

The maintenance and care of the soul is not only understood by protecting human existence in the physical dimension, such as fulfilling basic needs such as eating and drinking. In addition, there is a prohibition on killing humans.<sup>47</sup> The human soul does not only consist of bodily-physical elements, but also psychological elements. Therefore, the types of violence contained in the TPKS Law include not only physical violence, but also non-physical violence (Article 4). Not only physical violence has an impact on victims, but also psychological violence has a quite serious impact. The TPKS Law has provided tools to solve the problem of violence by providing mental and social rehabilitation (Article 70).

3) Protection and maintenance of the mind (*hifz al-'aql*)

The concept of safeguarding the mind has been explained by efforts to prohibit drinking alcohol because it can eliminate the mind, as a result there is no control over the actions taken.<sup>48</sup> In a contemporary perspective, safeguarding and maintaining reason by safeguarding the right to education and access to enrich knowledge and spread scientific thought.<sup>49</sup> Efforts to obtain protection and maintain education for victims are a serious concern (Article 69). This is because education is a victim's right that must be maintained by the government through the relevant ministries (Article 73). Even obliged to provide educational facilities (Article 71, paragraph 2). The educational facilities referred to in the article are described in the "Explanation of the Law" section, among others with educational assistance and scholarships. In addition to efforts to assist and advocate for victims of violence, the TPKS Law also makes efforts to prevent sexual violence through education efforts in their respective education units (Article 79).

4) Protection and maintenance of offspring (*hifz al-nasl*)

The concept of protecting offspring in the classical *maqāṣid* perspective is explained by prohibiting seclusion and committing adultery.<sup>50</sup> In fact, there is a view that considers the TPKS Law as a loophole to legalize adultery. Of course this view is unfounded and not argumentative. This has been explained in the explanation section that the act of free sex is an act that deviates from the principles of Pancasila. In Auda's contemporary *maqāṣid* concept, maintaining offspring

<sup>47</sup> Aniq, 'Maqāṣid al-Syarīah', 9.

<sup>48</sup> Aniq, 9; Alyūbī, *Maqāṣid Asy-Syarīah al Islāmiyyah*.

<sup>49</sup> Jasser Auda, *Maqāṣid Al-Sharī'ah A Beginner's Guide* (London: The International Institute of Islamic Thought, 2008), 24.

<sup>50</sup> Aniq, 'Maqāṣid al-Syarīah', 9.

is by creating a good family institution.<sup>51</sup> A marriage must be based on agreement and mutual acceptance between the two parties. Not with forced marriage. Forced marriage, of course, there are parties who do not accept the marriage. As a result, the family that is formed does not run on the basis of love. Forced marriage in the TPKS Law is also a form of sexual violence. The coercion can also be in the form of violence, deceit, power relations, threats, and can even use the condition of someone who is unable to give consent.<sup>52</sup> Furthermore, things that are included in coercion are child marriage, forced marriage in the name of cultural practices, forced marriage of the victim with the perpetrator of the rape (Article 10, paragraph 2).

5) Protection and maintenance of property (*ḥifẓ al-māl*)

The concept of safeguarding property (*ḥifẓ al-māl*) in the classical *maqāsid* view which is more preventive in nature is widely understood by avoiding economic practices that lead to usury. In Auda's perspective, contemporary *ḥifẓ al-māl* seeks to realize the socio-economic concerns of society and promote human welfare. In the context of the TPKS Law, victims who experience sexual violence not only provide physical and psychological assistance, but also get economic empowerment. Article 70 specifically states that one of the rights of victims is economic empowerment. Victims have the skills to work and earn. This is done during post-judicial recovery. In addition to economic empowerment for victims, economic empowerment is also given to victims' families (Article 71).

6) Protection and maintenance of honor (*ḥifẓ al-'ird*)

The birth of the TPKS Law was motivated by the increasing number of sexual violence in Indonesia. The issue of sexual violence is actually an act that violates human principles. It is clearly explained in Article 2 that the regulation of criminal acts of sexual violence is based on the principle of respect for human dignity. Respect for the principle of humanity must be protected. Efforts to provide such protection are carried out not only in response to events that occur, but also from the prevention stage to physical, psychological, and economic assistance. In addition, victims also get the right of recovery which is the responsibility of the state. Restoration of good name, for example, is explained in article 68, letter e which states that the victim has the right to the removal of sexually charged content for cases of sexual violence using electronic media.

Based on this explanation, the operational concept of Auda's contemporary *maqāsid* Sharia has been explained in the TPKS Law. The state has a major role in realizing the protection and maintenance of the rights attached to victims (Article 67, paragraph 2). Victims' rights include the right to handle cases and events that occur; the right to protection against threats, intimidation and violence; and the right to recovery from violence, both physical, psychological, economic recovery, and also a good name.

Paradigmatically, based on Auda's system theory, a rule is actually a cognitive product.<sup>53</sup> Since the law is a cognitive product, it is possible that there will be differences among the juries. This can be seen from the pros and cons of the ratification of the bill, as the author explained in the previous sub. Potential differences are also found in the context of the explanation of the minimum limit for children. The minimum age limit for children in the TPKS Law is 18 years (Article 1). Most of the

<sup>51</sup> Auda, *Maqāsid Al-Sharī'ah A Beginner's Guide*, 23–24.

<sup>52</sup> Tamam, 'Rancangan Undang-Undang Penghapusan Kekerasan Seksual', 854.

<sup>53</sup> Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*, 45.

laws and regulations do explain the minimum limit for children to be 18 years, but there is also a minimum limit for children to act legally as in the Compilation of Islamic Law, which is 21 years. The context for taking legal action to enter into a marriage is 19 years (Law 16 of 2019). Therefore, as part of the results of cognition, of course it does not rule out the possibility of differences among scholars and juries regarding the understanding of the TPKS Law. Nevertheless, the presence of the TPKS Law in the midst of the urgent need for this regulation, the presence of the TPKS Law occupies a *darūriyyah* position.

The next system in Auda's system theory paradigm is wholeness.<sup>54</sup> Auda's System Theory presupposes a systemic relationship between one element and another. Like an organ of the body, which has an interrelated relationship, reciprocally with one another.<sup>55</sup> Therefore, each element actually has a task and function in a system. In the context of *maqāṣid*, Auda brings the concept of *maqāṣid* from being individualistic to a more universal system.<sup>56</sup> The model and type of violence must be seen in its entirety, because it is in the process of being resolved, not only with one approach. At least, there are 3 elements, namely handling, protection, and recovery (Article 67). The needs of victims of sexual violence not only want the perpetrators of violence to be threatened with punishment, but also need protection and post-trial recovery. In addition, victims are also entitled to restitution, namely compensation for loss of wealth or income, compensation due to suffering experienced, reimbursement for medical and/or psychological treatment costs (Article 30).<sup>57</sup>

The next principle of systems theory is openness. In Auda's view, a living system must undergo change.<sup>58</sup> Therefore, the principle of openness to contemporary realities and various approaches is a must. Change of law is a sure thing. The intersection with science, technology, and modernity, has implications for legal changes. This paradigm of development and openness can be seen from the efforts to expand the types of sexual violence in the contemporary era. Therefore, in the TPKS Law there are types of electronic-based sexual violence (Article 4). In addition, a cross-disciplinary approach is also a guide in resolving violent incidents. Forced marriage due to rape victims, for example, psychologically in the end has an impact on marital relations that are not good. Victims will experience more depression because they continue to be with people who abuse them. The issue of forced child marriage is also problematic. The female reproductive organs do not yet have good readiness and maturity. Therefore, in an effort to prevent child marriages, the government takes prevention through several fields, one of which is the field of education. The field of education referred to in Article 79 includes education regarding reproductive health.

The next principle of system theory is the interrelated hierarchy.<sup>59</sup> As an organism, it is built from the smallest system in it. Auda explained that there was a paradigmatic problem with the classical *maqāṣid* concept. One of these problems is that classical *maqāṣid* only focuses on individual problems, rather than family, society, and humans in general. The next problem is that classical *maqāṣid* still lacks universal basic values such as justice and freedom, lastly that the sources of law

<sup>54</sup> Auda, 46.

<sup>55</sup> Auda, 47.

<sup>56</sup> Syukur Prihantoro, 'Maqasid Al-Syari'ah Dalam Pandangan Jasser Auda: Sebuah Upaya Rekonstruksi Hukum Islam Melalui Pendekatan Sistem', *At-Taḥkīr* 10, no. 1 (14 October 2017): 126.

<sup>57</sup> More about the Restitution Concept. Dennis Klimchuk, 'Retribution, Restitution and Revenge', *Law and Philosophy* 20, no. 1 (2001): 81–82; compare with Andrew Kull, 'Rescission and Restitution', *The Business Lawyer* 61, no. 2 (2006): 569–88.

<sup>58</sup> Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*, 47.

<sup>59</sup> Auda, 48.

formulation are still dominated by normative-literal sources, rather than empirical reality.<sup>60</sup> The TPKS Law tries to get out of this problem that the issue of sexual violence does not only focus on providing treatment and protection to victims, but also to the families of victims. In addition, the source of the formulation of the TPKS Law also departs from the empirical reality of increasing cases of sexual violence. In an effort to resolve cases of violence, it is the responsibility of all elements of both the central government and local governments. In addition to the state party who is responsible for preventing, advocating, and solving problems, the issue of violence is also the responsibility of the community and family (article 85).

The multi-dimensional principle became the next element of Auda's systems theory.<sup>61</sup> As a system, it does not only consist of one dimension, but consists of various dimensions. The TPKS Law accommodates various norms in resolving cases of violence, protection, and recovery. Legal norms are the main element. The issue of resolving cases of violence by providing sanctions and punishments for perpetrators is explained in sufficient detail in the TPKS Law starting from article 5 to article 19. In addition to criminal penalties, perpetrators of criminal acts are also subject to actions in the form of both medical and social rehabilitation (Article 17). Efforts to suppress cases of sexual violence are carried out comprehensively, both through legal norms but also social and cultural norms. The community also plays an important role in preventing cases of sexual violence.

The last principle is to focus on purpose/purposefulness. Every system has a purpose and a purpose. The goal is not only one, but can give birth to several goals. This is what distinguishes goal (*al-Hadf*) and purpose (*al-Ghayah*).<sup>62</sup> If the goal is only mechanical and has only one goal, while the purpose (*al-Ghayah*) has several goals in different situations and conditions. The TPKS Law does not only focus on prevention efforts, but also on resolving, protecting and recovering victims. In addition, the TPKS Law also aims to implement law enforcement and rehabilitate perpetrators; create a friendly, comfortable, non-sexual violence environment; and ensure that there is no repeated sexual violence (Article 3).

## Conclusion

The principle of *maqāṣid* Sharia development offered by Jasser Auda is more oriented to the development principle than the passive safeguard principle. The development offered by Auda is based on the principles of morality and respect for human rights. In addition, Auda also offers a system paradigm in viewing a rule or fatwa of Islamic law. In the context of Auda's perspective on the TPKS Law, the elaboration of the *ḍarūriyah* principle is manifested in 6 (six) elements of safeguarding, namely first, *ḥifẓ al-dīn*, that religion is an instrument for resolving violence and victims are given rights and assistance to be able to worship in a safe manner. Second, *ḥifẓ al-nafs*, namely the development of care that is not only oriented to physical care, but also non-physical (psychic) care. Third, *ḥifẓ al-'aql*, safeguarding and maintaining the mind by maintaining the right to education and access to enrich knowledge, namely the victim is given educational assistance and scholarships. Fourth, *ḥifẓ al-nasl*, namely realizing a strong and good marriage institution. Therefore, the TPKS Law prohibits forced marriage and child marriage. Fifth, *ḥifẓ al-māl*, which gives the right of restitution or material

<sup>60</sup> Prihantoro, 'Maqāṣid Al-Syari'ah Dalam Pandangan Jasser Auda', 128.

<sup>61</sup> Auda, *Maqāṣid Al-Shariah as Philosophy of Islamic Law*, 49–50.

<sup>62</sup> Auda, 51–52.

compensation. Victims are also entitled to economic empowerment rights, not only victims, but also the families of the victims. Sixth, *hifz al'ird*, namely restoration of good name due to cases of sexual violence, especially if it occurs through electronic media. The principle of respect for human dignity is the basic principle of the TPKS Law. As a system in responding to sexual violence in Indonesia, the TPKS Law also represents 6 (six) models of the systems theory paradigm, namely the cognitive nature, wholeness, openness, interrelated hierarchy, multi-dimensionality, and purposefulness.

## References

- Abdullah, M. Amin. 'Epistemologi Keilmuan Kalam Dan Fikih Dalam Merespon Perubahan Di Era Negara-Bangsa Dan Globalisasi (Pemikiran Filsafat Keilmuan Agama Islam Jasser Auda)'. *Media Syari'ah : Wahana Kajian Hukum Islam Dan Pranata Sosial* 14, no. 2 (30 October 2012): 123–50. <https://doi.org/10.22373/jms.v14i2.1871>.
- Adam, Adiyana. 'Pro Kontra Rancangan Undang Undang Penghapusan Kekerasan Seksual'. *AL-WARDAH: Jurnal Kajian Perempuan, Gender Dan Agama* 15, no. 1 (27 December 2021): 1–15. <https://doi.org/10.46339/al-wardah.v15i1.632>.
- Akrimi Maswah. 'Reinterpretasi Ayat-Ayat Tentang Relasi Gender Dalam Keluarga (Analisis Terhadap Penafsiran Edip Yuksel Dkk)'. *Şuhuf* 7, no. 2 (2014): 303–28.
- Alfitri, Alfitri. 'Protecting Women from Domestic Violence: Islam, Family Law, and the State in Indonesia'. *Studia Islamika* 27, no. 2 (3 August 2020): 273–307. <https://doi.org/10.36712/sdi.v27i2.9408>.
- Alyūbī, Muhammad Sa'd bin Aḥmad bin Mas'ūd. *Maqāsid Asy-Syari'ah al Islāmiyyah Wa 'Ilāqatuhā Bi al Adillati Asy-Syariyyah*. Arab Saud: Dar Hijrah Li An-Nasyr wa Tauzi', 1998.
- Aniq, Ahmad Fathan. 'Maqāsid al-Syari'ah wa Makānatuhā fi Istimbāt al-Aḥkām al-Syāriyyah'. *Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam* 12, no. 1 (2009): 1–24. <https://doi.org/10.15642/alqanun.2009.12.1.1-24>.
- Ansori, Ansori, and Muhammad Iqbal Juliansyahzen. 'The Contestation of the Family Law Discourse in the Digital Age: Islam, State, and Gender'. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (27 June 2022): 244–72. <https://doi.org/10.22373/sjhc.v6i1.9128>.
- Anwar, Etin. *Gender and Self in Islam*. 1 edition. London: Routledge, 2006.
- Arfan, Abbas. 'Maqasid al-Syari'ah sebagai Sumber Hukum Islam: Analisis terhadap Pemikiran Jasser Auda'. *Al-Manahij: Jurnal Kajian Hukum Islam* 7, no. 2 (23 December 2013): 183–94. <https://doi.org/10.24090/mnh.v7i2.563>.
- Aryani, Andi Sri Ratu. 'Analisis Polemik Pengesahan RUU Tindak Pidana Kekerasan Seksual (TPKS)'. *Najwa: Jurnal Muslimah dan Studi Gender* 1, no. 1 (26 January 2021): 30–49.
- Asasriwarni, Asasriwarni. 'Gender Dalam Perspektif Hukum Islam'. *Kafa'ah: Journal of Gender Studies* 2, no. 2 (12 July 2012): 1-12–12. <https://doi.org/10.15548/jk.v2i2.48>.
- Aṭiyyah, Jamaluddin. *Naḥwa Tafīl Maqāsid al-Syari'ah*. Damaskus: Dar al-Fikr, 2001.
- Auda, Jasser. *Maqāsid Al-Shari'ah A Beginner's Guide*. London: The International Institute of Islamic Thought, 2008.

- . *Maqasid Al-Shariah: A Beginner's Guide (Al-Maqasid Untuk Pemula)*. Translated by 'Ali Abdelmon'im. Yogyakarta: UIN Suka Press, 2013.
- . *Maqasid Al-Shariah as Philosophy of Islamic Law; A Systems Approach*. London and Washington: The International Institute of Islamic Thought, 2007.
- Bettinger-Lopez, Caroline, Alexandra Bro, and Renu Nargund. 'A Double Pandemic: Domestic Violence in the Age of COVID-19'. Council on Foreign Relations, 2020. <https://www.jstor.org/stable/resrep29816>.
- Bunch, Charlotte. 'Women's Rights as Human Rights: Toward a Re-Vision of Human Rights'. *Human Rights Quarterly* 12, no. 4 (1990): 486–98. <https://doi.org/10.2307/762496>.
- Būṭī, Muḥammad Saīd Ramaḍan al. *Ḍawābiṭ al Maṣlaḥah Fī al Syarī'ah al-Islāmiyyah*. Mesir: Muassasah al-Risalah, 1965.
- Cholil, Mufidah. 'Complexities in Dealing with Gender Inequality: Muslim Women and Mosque-Based Social Services in East Java Indonesia'. *Journal of Indonesian Islam* 11, no. 2 (5 December 2017): 459-488–488. <https://doi.org/10.15642/JIIS.2017.11.2.459-488>.
- De Jorio, Rosa. 'Between Dialogue and Contestation: Gender, Islam, and the Challenges of a Malian Public Sphere'. *The Journal of the Royal Anthropological Institute* 15 (2009): S95–111.
- Fried, Susana T. 'Violence against Women'. *Health and Human Rights* 6, no. 2 (2003): 88–111. <https://doi.org/10.2307/4065431>.
- Ghozali, Mahbub. 'Ambiguitas Tafsir Feminis Di Indonesia'. *Yinyang: Jurnal Studi Islam Gender Dan Anak* 15, no. 1 (12 May 2020): 75–94. <https://doi.org/10.24090/yinyang.v15i1.3641>.
- Hallaq, Wael B. 'Maqasid and the Challenges of Modernity'. *Al-Jami'ah: Journal of Islamic Studies* 49, no. 1 (29 June 2011): 1–31. <https://doi.org/10.14421/ajis.2011.491.1-31>.
- Hanafi, H. 'Teologi Penciptaan Perempuan: Rekonstruksi Penafsiran Menuju Kesetaraan Gender'. *BUANA GENDER: Jurnal Studi Gender Dan Anak* 1, no. 2 (30 December 2016): 143–63. <https://doi.org/10.22515/bg.v1i2.408>.
- Jovani, Audra. 'Perempuan dan Kebijakan Publik : Urgensi RUU Tindak Pidana Kekerasan Seksual'. *Jurnal Inada: Kajian Perempuan Indonesia di Daerah Tertinggal, Terdepan, dan Terluar* 4, no. 2 (2021): 1–13. <https://doi.org/10.33541/ji.v4i2.3778>.
- Juliansyahzen, Muhammad Iqbal. 'Good Governance Perspektif Maqasid Asy-Syaari'ah Kontemporer'. *AKADEMIKA: Jurnal Pemikiran Islam* 23, no. 1 (18 August 2018): 57–86. <https://doi.org/10.32332/akademika.v23i1.1195>.
- . 'Otoritarianisme Pemahaman Keagamaan: Melacak Akar Kekerasan Terhadap Perempuan Dalam Rumah Tangga'. *Yinyang: Jurnal Studi Islam Gender Dan Anak*, 17 June 2021, 49–70. <https://doi.org/10.24090/yinyang.v16i1.3999>.
- Kamali, Mohammad Hashim. *Maqasid Al-Shari'ah, Ijtihad and Civilisational Renewal*. London: The International Institute of Islamic Thought International Institute of Advanced Islamic Studies (iais) Malaysia and The International Institute of Islamic Thought, 2012.
- Khariri, Khariri. 'Kesetaraan Gender Dalam Perspektif Islam: Reinterpretasi Fiqih Wanita'. *Yinyang: Jurnal Studi Islam Gender dan Anak* 4, no. 1 (2009): 27–40.



- Khodijah N, Ela. 'RUU Penghapusan Kekerasan Seksual Dalam Melindungi Ketahanan Keluarga Sebagai Institusi Pendidikan Informal (Analisis Wacana Kritis PP Persistri Terhadap RUU Penghapusan Kekerasan Seksual)'. *Al - Mujaddid: Jurnal Ilmu-Ilmu Agama* 2, no. 1 (30 June 2020): 1–20. <https://doi.org/10.51482/almujaddid.v2i1.34>.
- Klimchuk, Dennis. 'Retribution, Restitution and Revenge'. *Law and Philosophy* 20, no. 1 (2001): 81–101.
- Kull, Andrew. 'Rescission and Restitution'. *The Business Lawyer* 61, no. 2 (2006): 569–88.
- Lahji, Abdullah bin Said al. *Īdōh Al-Qawā'id al-Fiqhiyyah*. Mekkah: Mathbaah al Madani, 1388.
- Maula, Bani Syarif. 'Keniscayan Pembacaan Ulang Tafsir Agama Untuk Menegaskan Kesetaraan Gender Dalam Kehidupan Keluarga Dan Masyarakat Islam'. *Yinyang: Jurnal Studi Islam Gender Dan Anak* 9, no. 1 (15 January 2014): 121–32.
- Murdijana, Desti, Siti Nurwati Hodijah, Ema Mukarramah, Dea Prameswari, and Raisa Nur Sugiri. 'Risalah Kebijakan Kekerasan Seksual; Stigma Yang Menghambat Akses Pada Pelayanan'. Jakarta: Komnas Perempuan, 2019.
- Nanthini, S., and Tamara Nair. 'COVID-19 and the Impacts on Women'. S. Rajaratnam School of International Studies, 2020. <https://www.jstor.org/stable/resrep26875>.
- Nur, Iffatin, Syahrul Adam, and M. Ngizzul Muttaqien. 'Maqāṣid Al-Sharī'at: The Main Reference and Ethical-Spiritual Foundation for the Dynamization Process of Islamic Law'. *AHKAM: Jurnal Ilmu Syariah* 20, no. 2 (30 December 2020). <https://doi.org/10.15408/ajis.v20i2.18333>.
- Organization, World Health. 'Covid-19 and Violence Against Women: What the Health Sector/ System Can Do'. World Health Organization, 2020. <https://www.jstor.org/stable/resrep28231>.
- Prihantoro, Syukur. 'Maqasid Al-Syari'ah Dalam Pandangan Jasser Auda: Sebuah Upaya Rekonstruksi Hukum Islam Melalui Pendekatan Sistem'. *At-Tafkir* 10, no. 1 (14 October 2017): 120–34.
- Shidiq, Ghofar. 'Teori Maqashid Al-Syari'ah Dalam Hukum Islam'. *Majalah Ilmiah Sultan Agung* 44, no. 118 (23 October 2022): 117–30.
- 'SIMFONI-PPA'. Accessed 5 July 2022. <https://kekerasan.kemenpppa.go.id/ringkasan>.
- Subki, Imam Tajiddin 'Abdul Wahhab bin Ali ibn Abd al-Kafi al. *Al-Asybah Wa al-Nazair*. Vol. I. Beirut: Dar al-Kutub al-Ilmiyyah, 1991.
- Sumera, Marchelya. 'Perbuatan Kekerasan/Pelecehan Seksual Terhadap Perempuan'. *LEX ET SOCIETATIS* 1, no. 2 (10 May 2013). <https://doi.org/10.35796/les.v1i2.1748>.
- Surayda, Helen Intania. 'Perlindungan Hukum terhadap Korban Kekerasan Seksual Dalam Kajian Hukum Islam'. *Jurnal Ius Constituendum* 2, no. 1 (5 April 2017): 24–38. <https://doi.org/10.26623/jic.v2i1.543>.
- Syaṭibi, Abu Ishaq Al-. *Al-Muwāfaqāt Fī Uṣūl al-Syari'ah*. Vol. II. Saudi: Dār Ibn 'Affan, 1997.
- Tamam, Ahmad Badrut. 'Rancangan Undang-Undang Penghapusan Kekerasan Seksual (RUU PKS) Dalam Perspektif Mashlahah Mursalah'. *Annual Conference for Muslim Scholar*, 2019. <https://www.ikaundip.org/readmore/29502-menelisik-pro-dan-kontra-ruu-inisiatif-dpr>.

Tobroni, Faiq. 'Kesetaraan Gender: Panggilan Nurani Membebaskan "Manusia Yang Dianggap Kelas Dua"'. *Musāwa Jurnal Studi Gender Dan Islam* 9, no. 2 (30 July 2010): 297–304. <https://doi.org/10.14421/musawa.2010.92.297-304>.

Umar, Nasaruddin. 'Perspektif Jender Dalam Islam'. *Paramadina* I, no. 1 (Desember 1998).

'UU PKDRT, Antara Terobosan Hukum Dan Fakta Pelaksanaannya'. Accessed 4 June 2022. <https://ditjenpp.kemenkumham.go.id/>.

Zuhailī, Wahbah al. *Naḥariyyah al Ḍarūrah Al-Syariyyah*. Beirut: Muassasah al Risalah, 1985.