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Optimalization of the Application of The Law Number 23 of 2004 on The Removal of Violence In The Household Perspective of Maqāṣid Al-Syarī`Ah

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ABSTRACT

The phenomenon of Domestic Violence (KDRT) itself is very contrary to the goals of Sharia, namely *Maqāṣid Al-Syarī`ah* and the principle of *mu'asyarah bil ma'ruf*, namely relations between husband and wife that are equal, harmonious and mutually respectful. Primarily, this research uses *maqāṣid Al-Syarī`Ah Jāsir ʿAudah* which is reoriented towards safeguarding, preserving and developing human resources, so it is important to optimize regulations and see their actualization, especially in the Women's Empowerment and Child Protection Department of Palu City. The aim of the research is to understand the optimization of the application of Law Number 23 of 2004 to legal protection efforts in the Palu City Women's Empowerment and Child Protection Service and analyze it using *Jāsir ʿAudah's maqāṣid al-syarī`ah* theory. In research using a qualitative approach, data collection techniques are through observation, interviews, and documentation, data analysis techniques used are data reduction, data presentation, and drawing conclusions. From the research results, it was found that the implementation of prevention, treatment and recovery measures carried out by the City Women's Empowerment and Child Protection Service was in accordance with Law Number 23 of 2004 which includes socialization strategies and legal protection. Even though the review of *maqāṣid al-syarī`ah* has been integrated in the implementation of this law, there is a need for more effective synergy between legal protection and fulfillment of the principles of *maqāṣid al-syarī`ah* to achieve optimal protection goals.

ARTICLE INFORMATION

Domestic Violence, Maqāṣid Al-Sharī`Ah, Jāsir ʿAudah, DP3A Palu City.

1. Introduction

Husbands and wives should each bear their respective responsibilities within a marriage so that they can build a family characterized by sakinah, mawaddah, and rahmah, while caring for and protecting one another. The Marriage Law states that the purpose of marriage is to establish a happy and everlasting family based on belief in the One and Only God. This means that marriage: (1) lasts a lifetime; (2) divorce requires strict conditions and constitutes a last resort; and (3) husband and wife help each other to develop themselves (Tutik, 2008).

From a natural perspective, the differences between husbands and wives, as well as between brothers and sisters, are complementary and should not be used as a basis for discriminatory treatment (Arto, 2015). Violence against women has occurred over a considerable period of time, causing many women to become victims who are

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consistently disadvantaged and leaving them with lifelong trauma. If such conditions are continuously ignored, they will result in suffering for women, depriving them of opportunities to develop their abilities, participate in national development, and enjoy the benefits of their country's development.

According to the state, all forms of violence, particularly domestic violence, constitute human rights violations, crimes against humanity, and forms of discrimination (Muslih, Nurdin, & Marzuki, 2020). This state perspective is based on Article 28 of the 1945 Constitution of the Republic of Indonesia, including its amendments. Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that: "Every person has the right to protection of their person, family, honor, dignity, and property under their control, and has the right to security and protection from threats of fear to do or refrain from doing something that constitutes a human right." (Lustarini, 2022)

Domestic violence has become a social phenomenon that can occur across various segments of society. One of the factors that triggers violence perpetrated by one family member against another is a disharmonious relationship within the household. This is inconsistent with the principle of Mu'asyarah bil ma'ruf, namely the interaction between husband and wife based on equality, harmony, and mutual respect.

Based on the researcher's preliminary observations at the Office of Women's Empowerment and Child Protection of Palu City, the data indicate that domestic violence has increased annually, except in 2023, when a decline was recorded. Reports submitted to the Office of Women's Empowerment and Child Protection of Palu City indicate that physical violence is the primary concern in cases of domestic violence. According to Ms. Nunung, who is responsible for Victim Services Development and Enhancement, reports involving physical violence constitute the most frequently received cases.

Law Number 23 of 2004 serves as the legal basis that sets out measures for preventing and addressing domestic violence. The law operates and performs its functions as a guide, caretaker, protector, and guardian of a nation's morality. Rooted in the principles of goodness or morality, the law carries out its duties in every aspect of a nation's life.

2. Literature Review

2.1 General Overview of Optimization

According to Winardi, optimization is a measure that enables the achievement of objectives. From the perspective of an endeavor, optimization is an effort to maximize activities in order to realize the desired or intended benefits. The ultimate goal of optimization is to minimize the effort required or to maximize the desired benefits. The benefits of optimization include identifying objectives, overcoming various constraints or problems, providing more accurate and reliable solutions, and making appropriate decisions. There are three elements of optimization problems that must be identified, namely objectives, alternative decisions, and limited resources (Sidik, 2002; Syamsiani, 2022).

2.2 General Overview of Domestic Violence

Domestic Violence, hereinafter referred to as KDRT, is a term consisting of the words "violence" and "household." These two terms are closely related, and to this day, domestic violence remains a form of criminal act that continues to occur. Although, in principle, these forms of violence can be found in and associated with certain criminal acts, such as murder, assault, rape, and theft (Sudjana, 2006).

Violence is an act or conduct involving the use of force to exert pressure or coercion, whether in physical or non-physical forms. It may be associated with something powerful, intense, or forceful, and

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predominantly destructive or coercive in nature. Violence arises from feelings expressed with intense emotion, including forms of conduct resulting from such actions or feelings (Sulaeman, 2010).

The definition of violence is provided in Article 89 of the Indonesian Criminal Code (KUHP), which states that "causing a person to lose consciousness or become helpless is equated with the use of violence." An act of violence is understood as the unlawful use of physical force or bodily strength of a significant degree. Loss of consciousness refers to a state in which a person is unaware or unconscious of themselves, while helplessness refers to a condition in which a person has no strength or physical power at all and is therefore unable to offer even the slightest resistance. However, a person who is helpless may still be aware of what is happening to them. Such acts are classified as assault under Articles 354 and 352 of the Indonesian Criminal Code (Jayanti, 2021).

Furthermore, a household is defined as the most important primary group in society. The term household refers to an individual or a group of people who live in a building, either entirely or partially, and generally reside together while jointly managing their daily needs as a single unit (Fakhruzy Agung, 2021).

Within the household, every person is prohibited from committing acts of violence against any member of their household. Domestic violence can take various forms. The forms of domestic violence, as stipulated in Articles 5–9 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, are as follows:

a. Physical Violence

Article 6 of Law Number 23 of 2004 stipulates that physical violence refers to acts that result in pain, illness, or serious injury. Physical violence may take various forms, including slapping, biting, stabbing, strangling, kicking, threatening someone with an object or weapon, and killing. Such acts can cause lasting trauma to victims of domestic violence, leaving them feeling neither comfortable nor safe.

b. Psychological Violence

Chapter 7 of Law Number 23 of 2004 explains that psychological violence refers to acts that cause fear, loss of self-confidence, loss of the ability to act, feelings of helplessness, and/or severe psychological suffering in a person (Republik Indonesia, 2004).

According to M. Quraish Shihab, the phrase "And live with them honorably" is understood as a command to treat wives kindly, whether they are loved or no longer loved. The word "honorably" is understood to mean refraining from causing harm or exerting coercion, and, beyond that, treating one's wife with kindness (Aziz & Ulya, 2024).

Furthermore, if you still love your wife, nurture and cultivate that love. However, if "you no longer like them," be patient and do not rush to divorce them. This is because "it may be that you dislike something," including certain qualities in your spouse that you find unappealing, "while Allah has placed in it" — that is, in what you dislike or in your spouse — other qualities that constitute "much goodness." (Ananda & Khair, 2025)

In short, according to M. Quraish Shihab, the warning conveyed in this verse aims to encourage husbands not to make hasty decisions concerning their household lives without first giving the matter careful consideration (Alimi & Nurwati, 2021).

The increase in acts of domestic violence against wives is attributed to three factors: sociodemographic conditions, economic circumstances, and the nature of the wife's relationship within the household (Alimi & Nurwati, 2021).

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2.3 The Impact of Domestic Violence

Violence is a serious problem with far-reaching consequences. For example, it can cause physical disabilities, trauma, stress, conflict, and even death. In children, violence can also affect their growth and development. Domestic violence has both short-term and long-term effects on women.

First, short-term effects are usually immediately apparent and may include physical injuries, disabilities, pregnancy, and unemployment. Second, long-term effects generally emerge in the future and may persist throughout a person's life. Victims often suffer from mental health disorders, loss of self-confidence, fear of being arrested, trauma, and depression (Yang et al., 2024).

Both types of effects can contribute to an increase in violence. In other words, there is concern that victims who do not receive adequate care may become perpetrators of violence in the future as a way of coping with past trauma. The consequences of domestic violence also affect reproductive health (Santoso, 2019).

Children living in families affected by domestic violence are at high risk of neglect, becoming direct victims of violence, and losing their parents as role models. Exposure to domestic violence can have profoundly negative effects on children's safety, the stability of their lives, and their overall well-being (Anggraini et al., 2023; Isnaeni, 2021).

Legal protection refers to the protection of human rights threatened by others and ensures that individuals can enjoy all the rights recognized by law. Legal protection is closely related to the juridical aspect.

According to Barda Nawawi Arief, the protection of crime victims can be understood in two ways. First, it can be interpreted as legal protection, namely the protection of a person's human rights and legitimate interests. Second, it can be understood as protection for crime victims to ensure that they receive legal guarantees or compensation for the suffering and losses they have experienced, in a manner comparable to victim assistance. Such protection may take the form of rehabilitation, the restoration of internal balance or psychological well-being, and the provision of remedies, including restitution, compensation, and social security, among other measures (Angandari, 2021).

2.4 General Overview of Maqāṣid Al-Syarī`ah

The term al-qashd refers to seeking the straight path and the obligation to adhere to it. The term is also used to indicate that an action or statement must be carried out in accordance with the principles of justice, avoiding both excessiveness and deficiency, while seeking a middle course. This meaning emphasizes avoiding exaggeration as well as excessive leniency in interpreting religious texts (*nash*). Thus, maqashid refers to an action undertaken with careful consideration and directed toward achieving something that leads a person to the straight path (truth). The truth attained must then be firmly believed in and consistently practiced. Furthermore, such actions are expected to provide solutions to the problems encountered under any circumstances.

Linguistically, the term sharia can be traced through Arabic dictionaries, where it carries meanings such *as al-din* (religion), al-millah (religious community or creed), *al-minhaj* (method or way), *al-thariqah* (path), and *al-sunnah* (tradition). The term *sharia* also literally means *maurid al-ma' alladhi tashra'u fihi al-dawab* (a place where water flows and from which animals drink). It also means *masyra'ah al-ma'* (a place where water emerges and a source of water).

The use of the term *al-shari'ah* to mean a place where water emerges and a source of water signifies that water is the source of life for humans, animals, and plants. Similarly, Islam is the source of life for every Muslim, providing welfare,

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progress, and salvation in this world and the hereafter. Without sharia, human beings would not attain goodness, just as they would be unable to obtain water to drink. Therefore, Islamic law is the source of all goodness, hope, and happiness, both in worldly life and in the hereafter. Accordingly, *maqāṣid al-sharī'ah* refers to the human endeavor to find comprehensive solutions and the right path based on the primary sources of Islamic teachings: the Qur'an and the Hadith of the Prophet Muhammad (peace be upon him).

Thus, *maqāṣid al-sharī'ah* constitutes the objectives and guiding orientation of Islamic law, toward which all *mujtahids* must direct their attention. One of the principles emphasized in *maqāṣid al-sharī'ah* is the adoption of a middle course and the avoidance of excessiveness in its application, because the *maṣlaḥah* (public interest or welfare) to be achieved must be grounded in revelation rather than being based solely on human reasoning (Busyro, 2019).

Based on the research of Islamic legal theorists (*ushul fiqh* scholars), five fundamental elements must be protected and upheld to achieve welfare in this world and the hereafter: religion (*hifz al-din*), life (*hifz al-nafs*), intellect (*hifz al-aql*), lineage (*hifz al-nasl*), and wealth (*hifz al-mal*) (Jalili, 2021; Muhammad Fuad Mubarok & Agus Hermanto, 2023).

3. Methodology

This study employs a qualitative method with a field research design and normative juridical and empirical juridical approaches. This design was chosen because the study examines not only the legal provisions governing the legal protection of domestic violence victims but also their implementation in practice. The research was conducted at the Office of Women's Empowerment and Child Protection (DP3A) of Palu City. Primary data were collected through observation and structured and unstructured interviews with relevant informants, including representatives of DP3A Palu City, the Central Sulawesi Representative Office of the National Commission on Human Rights, the Central Sulawesi Women's Care Community, and the Women and Children Protection Unit of the Palu City Police. Secondary data were obtained by examining primary legal materials, particularly Law Number 23 of 2004 concerning the Elimination of Domestic Violence, as well as secondary and tertiary legal materials, including books, scholarly journals, previous research findings, and legal dictionaries. The data were analyzed descriptively and inductively to obtain a comprehensive understanding of the legal protection afforded to victims of domestic violence.

4. Results and Discussion

4.1 Optimizing the Implementation of Law Number 23 of 2004 to Strengthen Legal Protection for Victims of Domestic Violence

Through optimization, the effectiveness of legal protection mechanisms can be improved. Legal protection is a crucial measure for ensuring the effectiveness and sustainability of systems designed to protect individuals against rights violations and violence. Accordingly, the sustainability of the legal framework established under Law Number 23 of 2004, as implemented by the Department of Women's Empowerment and Child Protection (DP3A) in Palu City, is equally important in protecting victims of domestic violence.

The incidence of domestic violence in Palu City is relatively high compared with other areas in Central Sulawesi. Several factors may contribute to this situation, including victims' reluctance to report incidents because of the shame and stigma associated with domestic violence, their fear of retaliation by perpetrators if they file a report, and the public's lack of knowledge about where to seek assistance. Another

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contributing factor may be delays in the handling of cases by law enforcement authorities. This issue was explained in an interview with a representative of the National Commission on Human Rights (Komnas HAM), who stated that the institution does not provide direct assistance to victims but is limited to offering counseling and issuing recommendations concerning law enforcement authorities that have not yet processed cases reported to Komnas HAM.

Therefore, legal protection for victims of domestic violence is essential. This protection can be examined from two perspectives: DP3A's policies for addressing domestic violence cases in Palu City and the effectiveness of implementing Law Number 23 of 2004 through DP3A in Palu City.

Before discussing DP3A's policies for addressing domestic violence cases in Palu City, the author first presents data on the number of domestic violence cases obtained from the National Commission on Human Rights, the Central Sulawesi Women and Children Care Community (KPPA), and the Women and Children Protection Unit (PPA) of the Palu City Police Resort.

Based on research data obtained from the National Commission on Human Rights (Komnas HAM) Representative Office in Central Sulawesi, the Central Sulawesi Women and Children Care Community (KPPA), the Women and Children Protection Unit (PPA) of the Palu City Police Resort, and the Department of Women's Empowerment and Child Protection (DP3A) of Palu City, the number of domestic violence cases has fluctuated from year to year. Data from Komnas HAM recorded one case each in 2013, 2022, and 2023.

Meanwhile, KPPA Central Sulawesi recorded 12 cases in 2019, 7 cases in 2020, 15 cases in 2021, 5 cases in 2022, and 15 cases in 2023. In 2023, the cases recorded by KPPA comprised 10 cases of physical violence, 10 cases of psychological violence, and 5 cases of household neglect, with a reported total of 15 cases according to the source data. Meanwhile, reports handled by the Criminal Investigation Unit (Satreskrim) of the Palu City Police Resort showed 77 reports, of which 49 cases were resolved in 2019; 63 reports, with 50 cases resolved in 2020; 88 reports, with 81 cases resolved in 2021; 73 reports, with 51 cases resolved in 2022; and 141 reports, with 68 cases resolved in 2023. DP3A Palu City data also revealed fluctuations in the number of domestic violence cases, recording 61 cases in 2020, 68 cases in 2021, 43 cases in 2022, and 60 cases in 2023. Differences in the number of cases recorded by each institution should be understood in light of their respective mandates, service coverage, and specific approaches to case handling and recording.

Specifically, DP3A data for 2023 recorded 82 cases overall, involving 85 victims, comprising 13 males and 72 females. By age group, the victims included 15 children under six years of age, 26 children aged 6–12, and 44 children aged 13–17. In terms of the forms of violence, the data recorded 15 victims of physical violence, 12 victims of psychological violence, 59 victims of sexual violence, 2 victims of human trafficking, 3 victims of neglect, and 4 victims in other categories. Interviews conducted by the researcher with DP3A Palu City representatives indicated that domestic violence is influenced by several factors, including economic circumstances, social factors, infidelity, child marriage, and educational attainment. Overall, these data indicate that violence cases in Palu City fluctuate and remain a serious concern requiring sustained attention. Therefore, efforts to prevent violence, improve the effectiveness of case management, and optimize legal protection for victims need to be strengthened so that the consequences of violence can be addressed and the incidence of domestic violence reduced.

The policies implemented by the Department of Women's Empowerment and Child Protection (DP3A) of Palu City can be

examined from two aspects: legal protection, and services and support provided to victims of domestic violence.

Based on the research findings, the Department of Women's Empowerment and Child Protection (DP3A) of Palu City implements preventive legal protection measures against domestic violence through the dissemination of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, as well as education on the protection of women and children, victims' rights, penalties for perpetrators, adolescent parenting, and the prevention of child marriage. These programs are implemented in collaboration with the Central Sulawesi Women and Children Care Community (KPPA) and the Palu City Police Resort, including through outreach activities in schools. These efforts aim to raise public awareness of the dangers of domestic violence and prevent its occurrence, particularly against women and children. This policy is consistent with Articles 4, 11, and 12 (1)(c) of Law Number 23 of 2004, which establish the objectives of preventing domestic violence and the government's responsibility to conduct advocacy and public awareness campaigns.

4.2 An Analysis of Maqāṣid al-Sharīʻah on the Optimization of the Implementation of Law Number 23 of 2004

Maqāṣid al-Sharīʻah is a core concept in Islamic law that emphasizes the objectives and purposes of Islamic teachings. In the context of domestic violence, Maqāṣid al-Sharīʻah underscores the prohibition of violence within the household and highlights the importance of maintaining harmony in order to establish a household characterized by sakinah (tranquility), mawaddah (love), and rahmah (mercy), thereby achieving the objectives intended by Maqāṣid al-Sharīʻah.

Islamic values are reflected in the substance of statutory regulations, including the principles of justice mandated by Islam in the Qur'an. Therefore, Jāsir ʿAudah's perspective on Maqāṣid al-Sharīʻah provides an appropriate approach for analyzing the objectives underlying such regulations, particularly Law on the Elimination of Domestic Violence (PKDRT). Jāsir ʿAudah developed this concept by adapting and expanding upon the principles of classical Maqāṣid al-Sharīʻah. He sought to demonstrate that Islamic values embodied in Indonesia's positive legal regulations can serve as a genuine manifestation of Islam as a mercy to all creation (rahmatan lil alamin), rather than remaining merely symbolic. Jāsir ʿAudah aimed to establish that Islamic law can address contemporary issues. Accordingly, the following discussion examines the contemporary reorientation of Maqāṣid al-Sharīʻah:

a. Ensuring Freedom and Respect for Beliefs

Indonesia adopts the concept of religious harmony, which is consistent with the objectives of maqāṣid. The concept of religious harmony encompasses three dimensions: harmony within religious communities, harmony among different religious communities, and harmony between religious leaders and the government. These three dimensions are commonly referred to as the "Three Pillars of Religious Harmony" (Tri Kerukunan Umat Beragama).[1] This framework represents an effort to prevent and firmly address all forms of harassment, violence, and discrimination against individuals or groups, particularly within families, on the basis of their religious beliefs or convictions.

The Law on the Elimination of Domestic Violence must also provide strong protection for individuals' rights to practice their beliefs, particularly in safeguarding children's welfare, including the right to equal treatment before the law regardless of religious background or belief. These principles are enshrined in Pancasila and the Constitution of the Republic of Indonesia.

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Similarly, Law Number 23 of 2004 concerning the Elimination of Domestic Violence accommodates the principles of freedom of religion or belief and respect for such freedom.

Chapter II, Article 3: Principles and Objectives

The elimination of domestic violence is carried out based on the following principles: (1) respect for human rights; (2) justice and gender equality; (3) non-discrimination; and (4) victim protection.

In particular, points (a) and (c) of the Domestic Violence Law reflect the importance of respecting the dignity and fundamental rights of every individual, including freedom of belief and religion. From the perspective of Maqāṣid al-Sharīʿah, respect for human rights constitutes one of the primary objectives, encompassing the freedom to hold religious beliefs without coercion or discrimination.

This is also addressed in Articles 24 and 34(2) of the Law on the Elimination of Domestic Violence, which regulate the services to be provided by spiritual counselors to victims of domestic violence. In practice, spiritual counselors are required to explain victims' rights and obligations and to strengthen their faith and piety.

From the perspective of Maqāṣid al-Sharīʿah, spiritual counseling services are intended to provide support and assistance in relation to victims' religious and spiritual needs. This includes fostering understanding of and respect for victims' beliefs and convictions, thereby ensuring that the guidance they receive is consistent with the values and principles they uphold.

b. Protection of Human Rights and Human Dignity

The first reform proposed by Jāsir ʿAudah is the reformulation of Maqāṣid al-Sharīʿah from a contemporary perspective, shifting its traditional emphasis on protection and preservation toward development and rights.

This approach emphasizes human rights in accordance with the principles of Islamic law, the Qur'an, and the Hadith. These rights are inherent to every individual by virtue of being human, including the right to life, freedom of expression, freedom of religion, the right to privacy, the right to be free from torture, and the right to equality before the law.

Among the human rights addressed in the Qur'an are the right to life, the right to work, the right to education, the right to liberty, freedom of religion, and freedom of expression.

Maqāṣid al-Sharīʿah is understood not merely as the preservation of values but also as the advancement of human welfare, the promotion of human dignity, the protection of fundamental rights, and the development of various aspects of life.

Reformed Maqāṣid al-Sharīʿah, which seeks to preserve and protect human dignity, can be interpreted as an effort to ensure that every individual is treated with dignity, without discrimination or degrading treatment. This includes protecting fundamental rights such as the rights to life, liberty, justice, and security. Protecting human dignity and human rights affirms that every individual possesses inherent dignity by virtue of being human. Human rights protect individuals against inhumane treatment, torture, slavery, and discrimination based on race, religion, gender, or social status. Thus, human rights serve as a safeguard for individual life, honor, and freedom.

Domestic violence clearly violates human rights and undermines human dignity by restricting freedom and subjecting victims to coercion and distress. Such conduct is therefore contrary to the principles of Maqāṣid al-Sharīʿah in Islam. In this context, the objective of eliminating domestic violence is to uphold human rights, including the right to live without fear of or threats from physical, psychological, or sexual violence perpetrated

by anyone, including members of one's own family. In general, these principles and values of Maqāṣid al-Sharīʿah are reflected in the Law on the Elimination of Domestic Violence (Law Number 23 of 2004).

5. Conclution

Based on the research findings, the implementation of Law Number 23 of 2004 concerning the Elimination of Domestic Violence by the Department of Women's Empowerment and Child Protection of Palu City is carried out through public awareness campaigns, protection of victims' privacy, psychological assistance, the provision of safe houses, and referrals to the Women and Children Protection Unit (PPA) of the Palu City Police Resort and Legal Aid Posts. However, its implementation has not been optimal due to limited budgets, heavy workloads, and restricted authority. From the perspective of *Maqāṣid al-Sharīʿah*, as developed by Jāsir ʿAudah, these efforts are generally consistent with the principles of protecting human rights and human dignity, strengthening family institutions, and improving welfare. Nevertheless, further improvements are needed to address existing obstacles and enhance the effectiveness of domestic violence prevention and victim protection.

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