

PROTECTION OF HUMAN RIGHTS VICTIMS OF SEXUAL VIOLENCE THROUGH MAQÂSĪD AL-SHARĪ'AH: A CASE IN BATU CITY INDONESIA

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ABSTRACT

Sexual violence can happen anywhere, and some perpetrators are usually related to the victim. A case of sexual violence occurred at Selamat Pagi Indonesia School in Batu city. The schoolmaster threatened the victim to comply with his wishes. A school environment, which should be a place to learn about science and ethics, has become a scene for sexual assault. This article aims to provide prevention and settlement alternatives for sexual violence through *maqâsid al-sharî'ah* methods. The data show that sexual violence at the school has occurred since 2009. This article includes empirical research using qualitative methods by describing and analyzing the data which is presented in descriptive text. The result of the research shows that the victims are incapable of fighting back due to manipulation in order to always be obedient and repay the perpetrators. The intimidation practice is in contrast to human rights and religious purposes, while the perpetrators exploit the power relation and manipulate religious narratives to commit the crime. Understanding religious purposes (*maqasid al-sharî'ah*) provides essential tools to minimize human rights violations in the form of sexual violence. One is allowed to make prejudices and refuse to engage in an activity that may lead to sexual violence. The resistance corresponds with *maqâsid al-sharî'ah* which consists of safeguarding the soul, progeny, mind, religion, and wealth.

Keywords: *maqâsid al-sharî'ah*; human rights; sexual violence.

INTRODUCTION

The phenomenon of sexual assault has reappeared and become a major issue on regional and national scale after the hashtag of Indonesia Sexual Violence Emergency went viral on various social media sites. One of the sexual violence cases that has received much public attention nationally is the grief incident of Novia Widyasari (NW), a girl from Mojokerto who died tragically in her late father's grave, after enduring a life with heavy burden due to sexual violence that befell her.

The final semester student at a State University in Malang City became a victim of sexual violence by her lover, a police officer named Randy Bagus Hari Sasongko. NW was raped several times and forced to have an abortion. The perpetrators and their families who were expected to provide support and strengthen the victim's

mentality sneered and condemned NW's actions and associations.¹ The unfavorable environmental conditions made the victim report the incident to the National Commission on Violence Against Women, but unfortunately, the response was quite slow.²

A similar case occurred in Batu City, under

1 Apart from not getting support from their environment, the victim is also accused of trapping the perpetrator into getting married immediately. See, <https://www.kompas.tv/article/239548/novia-widyasari-disebut-sempat-dituduh-keluarga-pacarnya-sengaja-jebak-bripda-randy-agar-dinikahi> accessed on 2 July 2022.

2 NW reported what happened to her to the Komnas Perempuan website in August 2021, but she only received a reply in the next 3 months. The contents of the reply simply suggested that NW should consult the Integrated Service Center for the Empowerment of Women and Children (P2TP2A) Mojokerto. See <https://jeo.kompas.com/indonesia-darurat-kekerasan-seksual-terhadap-perempuan> accessed on 2 July 2022.

the guise of a free school, Julianto Eka Putra, the founder of the school, sexually assaulted some of his students. Unfortunately, this heinous behavior has been carried out several times against several victims since 2009. The latest information stated that the number of victims is more than 10. In fact, this despicable act is not only carried out in schools, but also in various cities.

Julianto Eka Putra did not only commit sexual violence against his students but also exploited the economy by employing children beyond working hours and ignoring the education aspect which was their main obligation. Meanwhile, the wages or rewards received by these children are far from decent. This case has been tried at the Malang City District Court for 24 trials, and the Public Prosecutor has charged the suspect with 15 years sentence in prison. At the 25th trial, the panel of judges handed down a criminal sentence of 12 years in prison and a fine of 300 million subsidiary confinement of 3 months in prison at the trial for reading the verdict on 7 September 2022.³

The examples given above are just two of several instances of sexual assault that took place in the local areas before garnering national notice. Sexual assault is a phenomenon that is being gradually uncovered, like an iceberg. When you enter the keywords “sexual violence” with “name of the city/district” into a search engine, it is disclosed that the cases of sexual violence or its offshoots occur in nearly every region in Indonesia.

This condition is reinforced by data presented by the Ministry of Women’s Empowerment and Child Protection (PPA), at least in 2017 there were 21,027 cases of violence with details of 4,689 male victims and 17,948 female victims. A year later there were 21,666 cases of violence with victims who were dominated by women, totaling 18,141 people. In 2019, there was a decrease in violent cases amounting to 20,531, a downward trend in violent cases also occurred in 2020 with

a total of 20,501 cases. Then this case of violence skyrocketed sharply in 2021 with a total of 25,210 cases. The data presented by the Ministry of PPA are in line with the National Commission on Violence Against Women (Komnas Perempuan), that there has been an increase in violence cases of more than 1,000 cases (2,134 – 3,838) from 2020 to 2021.⁴ Of the 3,838 cases of violence that were reported to the National Commission on Violence Against Women, the majority were sexual violence with details of 2,204 cases.

The data is analyzed more deeply and it shows that the majority of sexual violence victims are women, and the perpetrators are people who are close to them⁵. If it is in the private sphere, most of the violence is carried out in the family or household. Meanwhile, in the public sphere, sexual violence occurs mostly in the educational environment. This fact motivates the researcher to do further analysis regarding the phenomenon of violence with its various derivatives. Families and teachers should be the first to protect and provide examples of truth, but some of them neglect their duties and ironically become sexual predators. The Secretariat General of the House of Representatives (DPR) RI through the Research Center of the Expertise Board stated that Indonesia was experiencing an emergency of sexual violence. This statement was delivered when commemorating the Day of Counter-Violence against Women on 25 November, 2021.⁶

³ <https://www.kompas.tv/article/326379/divonis-12-tahun-penjara-julianto-eka-putra-ajukan-banding> accessed on 1 August 2022.

⁴ In 2021 there were 338,496 cases of violence against women. This data comes from reports from the Religious Courts Agency (Badilag) 327,629 cases, reports from partner institutions 7,029 cases, and Komnas Perempuan 3,838 cases. See, Komnas Perempuan, *Bayang-Bayang Stagnasi: Daya Pencegahan dan Penanganan Berbanding Peningkatan Jumlah, Ragam dan Kompleksitas Kekerasan Berbasis Gender Terhadap Perempuan: Catatan Tahunan (CATAHU 2022) Kekerasan Terhadap Perempuan Tahun 2021* (Jakarta: Komisi Nasional Anti Kekerasan Terhadap Perempuan, 2022), 16.

⁵ Suci Amelia Harlen, “Pemenuhan Hak Santri atas Kasus Pelanggaran Hak Asasi Manusia oleh Oknum Pondok Pesantren,” *Jurnal HAM* 13, no. 2 (30 Agustus 2022): 199–214, <https://doi.org/10.30641/ham.2022.13.%p>.

⁶ Yosephus Mainake, *Darurat Kekerasan Seksual di Indonesia* (Jakarta: Sekretariat Jenderal DPR RI, 2021), 1.

The main objective of this research is to find out the causes of sexual violence in the educational environment. Especially cases of sexual violence that occurred at Selamat Pagi Indonesia School. This research also aims to implement *maqâşid al-sharî'ah* values that are in line with Human Rights (HAM) too minimize the prevalence of sexual violence, because some perpetrators of sexual violence abuse religion for sexual desire. *Maqâşid al-sharî'ah* can also be used as a basis so that women who are victims dare to fight back and reveal the acts of sexual violence they have experienced because the attitudes and testimonies of victims are guaranteed in human rights. It is hoped that no victim will hide the case for reasons of disgrace or the like. This kind of omission actually an opportunity for sexual predators to repeat these barbaric acts.

This research has novelty value because there has been no previous research that correlates with the principles of *maqâşid al-sharî'ah* that are in line with human rights to prevent and deal with cases of sexual violence. In addition, it is hoped that victims will have the courage to take action and speak up for what they have experienced. The bravery of the victim in speaking and taking action is considered to be in line with the concept map of *maqâşid al-sharî'ah* and human rights. Several previous studies that examined sexual violence, one of which was carried out by Dewi Wulan Tisyah and Erna Rochana, emphasized the relationship patterns of young couples in courtship. The results of his research show that many young people are trapped in a circle of violence in order to maintain their relationship.⁷ This research is certainly different from the previous research. It is because this research focuses on preventing sexual violence based on *maqâşid al-sharî'ah* and human rights.

Another study was carried out by Utami

Zahirah et al who analyzed the role of the closest person in recovering from the trauma of sexual violence victims with the family parenting method⁸. While this study portrays sexual violence in an educational setting, the methods used are also different. If the previous research used family parenting analysis, this study uses the *maqâşid al-sharî'ah* method. In fact, this research will present data about sexual violence that often occurs in private or personal areas.

Ahmad Mahyani and Adam Yuriswanto⁹ reviewed Law no. 17 of 2016 which includes castration as an additional punishment for perpetrators of sexual violence. The results of their research conclude that there is no rigid regulation regarding the implementation of castration punishment. If previous research recommends the punishment of castration and compares it with several countries that have implemented the punishment, this study emphasizes more on educating victims or those who have the potential to become victims to have the courage to take action and fight pedophile perpetrators based on *maqâşid al-sharî'ah* and human rights. On the same basis, this study also wants to invite victims to be brave enough to report sexual violence they have experienced and provide an understanding to the wider community so that they are aware of the victims, not bullying them.

It was Hery Purwosusanto¹⁰ who in his research stated that the female circumcision is a form of sexual violence. The similarity of this research with previous research is the focus on sexual violence. The difference lies in the acts of sexual violence studied and the use of *maqâşid*

7 Dewi Wulan Tisyah dan Erna Rochana, "Analisis Kekerasan Pada Masa Pacaran," *Jurnal Sociologie* 1, no. 1 (2013): 1–9, <http://pshi.fisip.unila.ac.id/jurnal/files/journals/5/articles/199/public/199-618-1-PB.pdf>.

8 Utami Zahirah, Nunung Nurwati, dan Hetty Krisnani, "Dampak Dan Penanganan Kekerasan Seksual Anak Di Keluarga," *Prosiding Penelitian dan Pengabdian kepada Masyarakat* 6, no. 1 (6 Agustus 2019): 10–20, <https://doi.org/10.24198/jppm.v6i1.21793>.

9 Ahmad Mahyani dan Adam Yuriswanto, "Hukuman Kebiri Sebagai Pidana Tambahan Dalam Tindak Pidana Kejahatan Seksual," *DiH: Jurnal Ilmu Hukum* XIV, no. 27 (Februari 2018): 28–40.

10 Hery Purwosusanto, "Khitan, Perempuan Dan Kekerasan Seksual," *Jurnal Studi Gender Dan Anak* 7, no. 02 (24 Desember 2020): 1–16, <https://doi.org/10.32678/jsga.v7i02.180>.

al-shari'ah theory in analyzing and preventing criminal acts of sexual violence.

Next is Putu Eva Ditayani Antari¹¹ who studies sexual violence against children in Karangasem, Bali. The research concept uses restorative justice compared to local customary law. This research, compared to the previous research, has similarities because it discusses sexual violence against children. However, the locus of research and study used is different because this study uses the concept of *maqâsid al-shari'ah* without comparing it to local customary law.

Then there is a study entitled "Guarantee of Human Rights (HAM) for Domestic Workers with Employment Agreement". This study emphasizes that domestic assistants or domestic workers are not part of the workforce that is protected by law, therefore this kind of condition is detrimental to them.¹² The similarity of previous research with the current research is related to the fulfillment of human rights. If previous research focuses on domestic assistants, this study focuses on the human rights of sexual violence victims.

Then the latest is a study from Suci Amelia Harlen¹³ about sexual violence that occurred at a boarding school in Cibiru, Bandung. Herri Wiryawan the head of the boarding school has sexually assaulted the children living in the area. The results of the study recommend that there should be control over children and services provided for victims of sexual violence. This study correlates with previous research because it examines and analyzes sexual violence that occurs

in educational institutions, but the approach method used is different. The method used in this study is the understanding and implementation of *maqâsid al-shari'ah* so that it can minimize sexual violence in the future and invites victims to be brave to take action by reporting the perpetrator to the authorities.

This article is expected to be one of the guidelines for us in fighting and tackling the crime of sexual violence. This article is also expected to encourage the victims of sexual violence to be brave enough to report what happened, as well as the surrounding community to provide support so that they can survive again. Victims should not be left alone in lamenting their fate. They must get a proper and comfortable place and complaint as a form of service to human rights. Therefore, letting them get involved with the case they are experiencing, especially with negative justification, is a serious violation of human rights. Additionally, the benefit of this research is to offer a method of overcoming sexual violence with a religious approach (*maqâsid al-shari'ah*), because it is not uncommon for perpetrators of sexual violence to manipulate religion in launching their actions.¹⁴

METHOD

This research uses empirical juridical approach or it can also be called sociological legal research.¹⁵ Empirical juridical research aims to obtain legal facts in the field by meeting and examining the object directly.¹⁶ The data sources used include primary, secondary and tertiary legal data. The primary data in this study are victims of sexual violence in Batu City and several other witnesses. The data were obtained through

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- 11 Putu Eva Ditayani Antari, "Pemenuhan Hak Anak yang Mengalami Kekerasan Seksual Berbasis Restorative Justice pada Masyarakat Tenganan Pegringsingan, Karangasem, Bali," *Jurnal HAM* 12, no. 1 (22 April 2021): 75–94, <https://doi.org/10.30641/ham.2021.12.75-94>.
 - 12 Siti Maizul Habibah, Oksiana Jatningsih, dan Iman Pasu Marganda Hadiarto Purba, "Jaminan Hak Asasi Manusia bagi Pekerja Rumah Tangga melalui Perjanjian Kerja di Surabaya," *Jurnal HAM* 12, no. 2 (26 Agustus 2021): 245–60, <https://doi.org/10.30641/ham.2021.12.245-260>.
 - 13 Harlen, "Pemenuhan Hak Santri atas Kasus Pelanggaran Hak Asasi Manusia oleh Oknum Pondok Pesantren," 199–214.

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- 14 Engkos Kosasih, "Literasi Media Sosial Dalam Pemasarakatan Sikap Moderasi Beragama," *Jurnal Bimas Islam* 12, no. 2 (27 Desember 2019): 263–96, <https://doi.org/10.37302/jbi.v12i2.118>.
 - 15 Roni Hanitijo Soemitro, *Metodologi Penelitian Hukum* (Jakarta: Ghalia Indonesia, 1987), 69. See, Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media, 2007), 103.
 - 16 Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2013), 73–74.

interviews with related parties. There were 8 victims-witness of sexual violence and 2 school administrators and 4 victims' families who agreed to be interviewed. While the secondary data is the book of fiqh which regulates *maqâshid al-sharî'ah*.

The various legal information and data were analyzed using an *ijtihad* approach based on *maqâshid al-sharî'ah*. The purpose of using *maqâshid al-sharî'ah* in this study is to find the right legal construction for overcoming sexual violence. Moreover, the use of *maqâshid al-sharî'ah* aims that the scientific paradigm in Islamic teachings will always be *şâliḥ li kulli zamân wa makân* (contextual in all space and time). The theory of *maqâshid al-sharî'ah* used in this study is the idea of Abû Ishâq al-Syâtîbî.¹⁷

FINDINGS AND DISCUSSION

A. Definition dan Typology of Sexual Violence

The recent practice of violence often adorns the digital information space. This phenomenon cannot be justified under any circumstances. According to the Big Indonesian Dictionary (KBBI), the definition of violence is interpreted narrowly, because the definition of violence according to the KBBI is an act or act that results in injury or death of a person. This kind of understanding seems to interpret violence as just a physical act. Meanwhile, the definition of violence in terminology is a form of action that injures the actual human aspect. Some of these acts of violence can take the form of robbing, intimidating, threatening, terrorizing, injuring, raping and killing other people.¹⁸

Some experts also interpret violence as physical actions that harm other people (victims). Romli Atmasista said that violence is an act that physically damages an object, injures the body,

and causes death.¹⁹ Then violence is also defined as an act that uses physical strength by intimidating others and causing injuries, bruises, trauma, to death.²⁰ The meaning of experts on the definition of violence may be guided by the rules contained in the Civil Code (KUHP) because almost all articles in the Criminal Code define violence by physical action.

Based on the resulting scale, violent crimes can be classified into three forms: *First*, domestic violence. This condition usually arises in the family sphere due to several things such as husband and wife disputes, tired physical and psychological conditions, and economic conditions. The phenomenon of domestic violence is sometimes influenced by a misunderstanding of religion. Some Muslims think that husbands have greater power than wives, so they can do things they like and sometimes hurt their wives. *Second*, criminal violence. This type of violence is carried out by a person or group with a criminal background such as robbery, murder or persecution. *Third*, mass violence. This typology of violence is carried out by the masses who demand certain conditions to change for the better from a structural or cultural perspective.²¹ Law Number 23 of 2004 concerning the Elimination of Domestic Violence states that sexual violence is an act of forcing sexual intercourse, the act of forcing sexual relations unnaturally, forcing sexual relations with others for commercial purposes and/or certain purposes.²²

17 Al-Syâtîbî classifies *maqâshid al-syarî'ah* into three parts, namely: *daruriyat*, *hajjiyat* and *taḥsiniyat*. See, Abu Ishâq Al-Syâtîbî, *al-Muwaffaqât fi Uşûl al-Syarî'ah*, vol. 1 (Beirut: Dâr al-Ma'rîfah, 1996), 122.

18 Munandar Sulaiman dan Siti Homzah, *Kekerasan Terhadap Perempuan Tinjauan dalam Berbagai Disiplin Ilmu dan Kasus Kekerasan* (Bandung: Refika Aditama, 2010), 74.

19 Romli Atmasasmitha, *Teori & Kapita Selekta Kriminologi* (Bandung: PT. Eresco, 1992), 49.

20 Yesmil Anwar, *Saat Menuai Kejahatan: Sebuah Pendekatan Sosiokultural Kriminologi, Hukum dan HAM* (Bandung: Unpad Press, 2004), 102.

21 Eka Hendry, *Monopoli Tafsir Kebenaran: Wacana Keagamaan Kritis dan Kekerasan Kemanusiaan* (Kalimantan: Persada Press, 2003), 115.

22 "Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga" (t.t.). The definition of sexual violence is an act or word that is carried out to intimidate and control the victim so that he is forced to carry out unwanted sexual activities. This sexual violence has main components, namely elements of violence or coercion and elements of the victim's inability to resist this form of sexual violence. See, Aroma Elmina Martha, *Perempuan Kekerasan dan Hukum* (Yogyakarta: UII Press, 2003), 52.

International agreements that examine sexual violence can be found in the Rome Statute, United Nations Resolutions governing sexual violence during war conflicts, the Vienna Declaration and the Declaration on the Elimination of Violence against Women. Regulations in Indonesia that regulate violence are contained in the Criminal Code, the Law on Trafficking in Persons, the Law on the Elimination of Domestic Violence and the Law on Child Protection. The various juridical regulations are deemed to not yet applicable and inadequate because they only regulate the criminal aspect of perpetrators of sexual violence. Meanwhile, there is no focus on handling victims, both in terms of psychological recovery and other rights. As a result, it is necessary to make special regulations that examine sexual violence from various perspectives.

The academic paper related to the Draft Law on the Elimination of Sexual Violence states that there is a difference between sexual violence and sexual harassment. Sexual violence is an act that demeans, attacks, intimidates and insults the body related to sexual desire and/or reproductive function which is carried out by force and against the will. Victims also do not have the power to refuse because there are gender relations and power imbalances that result in suffering in the form of a psychological, physical, sexual, and social aspect. While sexual harassment is part of sexual violence.²³

The Draft Law on the Elimination of Sexual Violence went through a quite tortuous journey before it was passed into law. Researchers noted that it took at least 10 years for this bill to be passed because since 2012 it has become part of the national legislation program. Many pros and cons emerged during the process of ratifying the Draft Law on the Elimination of Sexual Violence. Various cases of sexual violence that are increasing

every year are one of the reasons for those who are pushing for the draft to be immediately ratified. However, in 2020 this bill was withdrawn from the national legislation program. This decision provoked a reaction from some parties, which led them in executing demonstrations around the House of Representatives (DPR) building. Meanwhile, the opposing parties said that the Draft Law on the Elimination of Sexual Violence was not in line with the religion, customs and eastern culture adopted by the Indonesian people. Another reason is that the punishment of perpetrators of sexual violence is quite guided by the existing regulations.²⁴

The National Commission on Violence Against Women (Komnas Perempuan) is an organization that adopts the Draft Law on the Elimination of Sexual Violence. The National Commission has identified at least 15 types of sexual violence. There are several sexual violence committed by Julianto Eka to his victims. *First*, forced abortion. This action was carried out to eliminate the evidence of sexual violence that he had committed, even though he did not hesitate to spend some money for the sake of destroying the evidence of his crime. This condition threatened the victim and damaged her mental state.²⁵

Second, rape or obscenity. Rape is an act of inserting the penis into the vagina accompanied by threats, violence, and abuse of power. Today, some experts say that rape also occurs within the scope of marriage or what is commonly called *marital rape*²⁶. The term obscenity is often known in law enforcement in Indonesia. This obscenity can be

23 Masyarakat Pemantau Peradilan Indonesia, "Perbedaan Kekerasan Seksual dan Pelecehan Seksual Menurut Naskah Akademik Rancangan Undang-Undang Penghapusan Kekerasan Seksual Oleh KOMNAS Perempuan" (Fakultas Hukum Universitas Indonesia, t.t.), 1, diakses 10 Agustus 2022.

24 Novi Nur Lailisna, "Polemik Rancangan Undang-Undang Penghapusan Kekerasan Seksual (RUU PKS): Studi Kritis dan Prospektif," *An Natiq: Jurnal kajian Islam Interdisipliner* 01, no. 01 (2021): 67–74.

25 Utami Zahirah Noviani dkk., "Mengatasi Dan Mencegah Tindak Kekerasan Seksual Pada Perempuan Dengan Pelatihan Asertif," *Jurnal Penelitian & PPM* 5, no. 1 (2018): 101–10.

26 Jenny Rahayu Afsebel Situmorang dan Vinita Susanti, "The Role of Victim's Assistant to Prevent Secondary Victimization : Case Women Victim of Marital Rape," *HUMANISMA : Journal of Gender Studies* 5, no. 2 (31 Desember 2021): 106–18, <https://doi.org/10.30983/humanisme.v5i2.4709>.

defined as rape committed against a victim who is a child. This study found that sexual violence and obscenity did not only occur at the Selamat Pagi Indonesia School, but also in various places. *Third*, sexual intimidation. That is an act that intimidates or causes anxiety and psychological suffering to the victim. This action can be expressed directly or indirectly. Perpetrators dare to intimidate victims because they have stronger power relations, so they can impose their own will.

Fourth, sexual harassment. It can be expressed directly by physically touching the victim's sexual organs. Examples of indirect sexual harassment include whistling, talk containing sexual temptations, showing sexual material that makes the victim feel disturbed, uncomfortable, and humiliated. Indirect sexual harassment can also be in the form of temptation through social media. Rapid technological developments have a major impact on people's behavior.²⁷ *Fifth*, is social exploitation. This action is in the form of abuse of trust or power with the desire to satisfy the sexual desire of the perpetrator or make material gains. This sexual exploitation is often found in the form of prostitution.²⁸ In the case of the Indonesian Good Morning School, the perpetrator forced the victim to work beyond the time limit and did not get a proper wage.

Sixth and seventh, sexual torture and inhumane punishment, which comprise acts that injure or cause physical and psychological damage to the victim. This act was carried out with the aim of punishing the victim or simply obtaining recognition from others.²⁹ Then the method of punishment that causes pain, pressure, fear, and shame such as whipping or humiliating

in public is part of an inhumane punishment. Then on May 9, 2022, Draft Law on the Elimination of Sexual Violence was passed into Law Number 12 of 2022 concerning the Crime of Sexual Violence. The definition of sexual violence based on the Act on the Crime of Sexual Violence is all acts or acts that include criminal elements and other acts of sexual violence as contained in the regulation.³⁰ Meanwhile, all typologies of sexual violence listed in the academic text are accommodated by Law Number 12 of 2022 concerning the Crime of Sexual Violence.

The ratification of Law Number 12 of 2022 concerning the Crime of Sexual Violence is a glimmer of hope for victims to get protection and avoid negative stigma from society. Sexual violence is a case that is difficult to uncover due to the perception of some people who associate it with morality theory. Victims (mostly women) are seen as a symbol of grace and chastity, if any woman falls into sexual violence, it will be considered a disgrace. This kind of assumption has resulted in some victims' discouragement to speak up and report what happened. This law is considered not only to punish the perpetrators, but also to give the victims their rights to receive proper handling and treatment.

B. Description of Sexual Violence at Selamat Pagi Indonesia School in Batu City

The series of cases of violence in recent times has attracted national public attention. One of the reasons is that the number of violent crimes has increased quite high, both in the private/personal, public and state realms. The Religious Courts Agency (Badilag) in 2020 recorded 215,694 cases of violence. This case increased significantly in 2021 with a total of 327,629 cases, an increase of more than 50%. For three dollars, the data on violence at the National Commission on Violence Against Women also experienced a drastic increase. In 2020 there were 2,134 cases of violence, meanwhile in 2021 it increased

27 Miftahuddin Azmi, *Agama Medsos: Potret Keberagaman Era Revolusi Industri 4.0* (Jakarta: Direktorat Urusan agama Islam dan Pembinaan Syariah, 2019), 88.

28 Marcheyla Sumera, "Perbuatan Kekerasan/Pelecehan Seksual Terhadap Perempuan," *Lex et Societatis* 1, no. 2 (2015): 88–101, <http://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/1748>.

29 Romany Sihite, "Kekerasan Negara Terhadap Perempuan," *Jurnal Kriminologi Indonesia* 3, no. 1 (2017): 33–42, <http://journal.ui.ac.id/index.php/jki/article/viewFile/1118/1026>.

30 Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual.

by 80% to 3,838 cases. The same situation also occurs in private institutions that concern with the phenomenon of violence, there were at least 7,029 cases in 2020 and increased to 8,234 the following year.³¹

The trend of increasing violence is quite worrisome, but on the other hand, the researcher assesses that there has been progress in the courage of the victims in reporting the incidents that happened to them. This courage should be appreciated as a form of support for them, because negative judgment actually makes them suffer even more and does not reflect proper human morals. In addition, the increase in reports of sexual violence could be due to the application of technology in responding to public complaints. The Religious Courts Agency uses *e-court* media³² in serving justice seekers, while the National Commission on Violence Against Women (Komnas Perempuan) uses an online complaint system to make it accessible to the public. Nevertheless, there are several notes that the Religious Courts and the National Commission must pay attention to, which are fast, precise and responsive handling. The slow response was once becoming an issue in Novia Widyasari's case, one of the victims of sexual violence who made an online report about her problem to the National Commission on Violence Against Women. She did not immediately receive the response she looked forward to that she finally decided to commit suicide because she could not bear the heavy burdens of life due to her incident any longer.

If it is broken down further, violence in the personal sphere ranks at the top with 335,399 cases (99%), while in the public sphere there are

3,045 cases (0.9%), then violence in the state level is 52 cases (0.01%). The majority of the ages of victims of sexual violence are in the range of 25 to 40 years, then 14-17 years old, and 18-24 years old. The facts also show that there are victims who are under 5 years old and over 60 years old. This phenomenon illustrates that all groups of age are vulnerable to become sexual victims. Meanwhile, the majority of perpetrators of sexual violence (pedophilia) are 25 to 40 years old, followed by 18 to 24 years old and 41 to 60 years old. If examined on a case-by-region basis, East Java is one of the provinces with high cases of violence. The National Commission said that 373 cases occurred in East Java in 2021, the third highest in Indonesia. In the same year, private institutions received 654 cases and the Religious Courts Agency received 53,546 cases. This number should be used as a joint introspection that the phenomenon of violence is still disturbing the peace of the people of East Java.³³

One of the sexual violence that occurred in East Java was sexual violence under the guise of a free school (Selamat Pagi Indonesia School) in Batu, East Java. The beginning of this case emerged to the public thanks to a report from the National Commission for Child Protection (Komnas PA) to the East Java regional police on May 29, 2021. At that time the National Commission for Child Protection report was denied by one of the school administrators, the woman who did not want to be named doubted the report National Commission of Child Protection, because during her entire career at the school there are no accusations as pinned by the National Commission for Child Protection. The woman with the initials RA even said that if there was sexual violence, she would be the first

31 Perempuan, *Bayang-Bayang Stagnasi: Daya Pencegahan dan Penanganan Berbanding Peningkatan Jumlah, Ragam dan Kompleksitas Kekerasan Berbasis Gender Terhadap Perempuan: Catatan Tahunan (CATAHU 2022) Kekerasan Terhadap Perempuan Tahun 2021*, 18.

32 Khotib Iqbal Hidayat, Aris Priyadi, dan Elly Kristiani Purwendah, "Kajian Kritis Terhadap Dualisme Pengadilan Elektronik (E-Court) dan Konvensional," *Batulis Civil Law Review* 1, no. 1 (30 Oktober 2020): 14–23, <https://doi.org/10.47268/ballrev.v1i1.421>.

33 The data above places East Java as the third province in Indonesia that is prone to violence. See, Perempuan, *Bayang-Bayang Stagnasi: Daya Pencegahan dan Penanganan Berbanding Peningkatan Jumlah, Ragam dan Kompleksitas Kekerasan Berbasis Gender Terhadap Perempuan: Catatan Tahunan (CATAHU 2022) Kekerasan Terhadap Perempuan Tahun 2021*, 29.

person to report it to the police.³⁴

However, the National Commission for Child Protection was adamant and said that sexual violence at the school has been going on since 2009, but the victim only dared to report it in 2021 because of pressure and worry. Mutiara (pseudonym) is one of the victims that the researcher managed to meet. She is from Malang City. One of the reasons he continued his education at the school was the exemption from tuition fees, this reason became important because he only lived alone with his mother who worked as a household assistant. Mutiara said that she had not experienced and witnessed sexual violence in her school firsthand, but she often heard stories of sexual violence from her friends. He also mentioned that there was a senior who was threatened (by the perpetrator) that his leg would be broken if he dared to report what had happened. The perpetrator (Julianto Eka) even manipulated the victim to always obey his order by bringing up his effort and help in providing free education for the victim.

Mutiara confirmed that apart from school, she also worked in one of the business units established by the perpetrators. Julianto Eka is known to have a lodging business which is located not far from the Selamat Pagi Indonesia School. Mutiara said that after school she immediately worked at the inn, sometimes she worked more than 8 hours. Even on weekend she has to leave school because of the many visitors staying at the hotel where he works.³⁵

One victim named Yurika (a pseudonym/19 years old) mentioned that the perpetrators had ever addressed her as *“first lady”*. Although

Yurika does not understand the expression, she reckoned that the perpetrator had once tapped her thigh. She was embarrassed by what he did and told her friends. While her friend’s response at the time was, *“Gitu iku biasa. Sing ati-ati. Akeh sing lebih nemen”*. *“So that’s common. Be safe. Many (victims) are worse.”* The incident was reported to Yurika’s parents, and they agreed to move Yurika to another institution.³⁶

A similar story is told by Dini (pseudonym/23 years old), Airin (pseudonym/23 years old), and Maria (alias/22 years old), all three alumni of Selamat Pagi Indonesia school. Airin has been the first who registered at the school because she wanted to learn about entrepreneurship. Then Dini and Maria followed Airin’s footsteps after not accepted in the state school. The three of them were sexually abused but not all at once.³⁷

Researchers analyzed that a perpetrator of sexual abuse was staged gradually with several random victims. At times the perpetrator uses power relations to intimidate the victims and force them to have sexual intercourse. Viola (pseudonym alias/20 years old) and Nunik (pseudonym/22 years old) revealed that they were often hugged. At first, the two victims did not really find it peculiar, but they became suspicious and uncomfortable

34 The Informant explain a similiar tetimony on a podcast show. See <https://www.gorajuar.com/ragam/pr-1003867061/pengakuan-teman-korban-pelecehan-motivator-je-di-podcast-denny-sumargo-saya-tidak-pernah-melihat> accessed on 01 August 2022.

35 Interview with Mutiara on 29 July 2022 and see <https://mediaindonesia.com/nusantara/506418/polda-jatim-temukan-12-lokasi-eksploitasi-anak-di-sma-spi-kota-batu> accessed on 01 August 2022.

36 Yurika’s parents are the religious figures of the village, where their job is as a seller of tempe chips. They were unsupplied with tempe chips during the covid-19 pandemic as factories downsize production. The economic conditions did not dissuade Yurika’s parents from moving her child to another school for her safety. Interview with Yurika and her parents on July 29, 2022.

37 Airin tells of a boarding school picket being visited by the perpetrator and both cheeks kissed. It happened when she turned 18 and sat in class XII. She described that it happened twice. In the end, she wore facial masks when she was active outside the dorm. Airin explained that it was to prevent similar incidents. Once she was called alone by the perpetrator, but she refused and was forced to lie saying he was sick with chicken pox. Interview with Airin was on July 29, 2022. Meanwhile, Dini and Maria testified that they were often sexually harassed with inappropriate calls. During these interviews with the victims, their parents walked by with intense anxiety and trauma with their children. They were traumatized by foreigners and feared that they were Selamat Pagi Indonesia school messengers. When asked the reason for their concern, all unitedly replied, *“I want a quiet life, Sir.”*

after the perpetrator kept doing the hugs every time they came across each other. Nunik noted that engaging in activities with many students made her feel more secure. These two youngsters from the unfortunate south mentioned having ever heard of a sexual assault by the perpetrator, but not knowing in person.³⁸

When the researcher interviewed the security officers at Selamat Pagi Indonesia school, they said they did not know for sure. Therefore, they chose to remain silence when asked about sexual assault information at the school. Meanwhile the school administrators defended that if the sexual abuse really occurred, it would not be possible for the school to exist until now.³⁹

This case is even more interesting because the perpetrator is not immediately named as a suspect, he became a suspect later in August 2021. Meanwhile, the case file was only tried for the next 6 months, which is in February 2022. The perpetrator who is already a defendant has not been detained by the court. The reason at that time was that the defendant was cooperative and the detention was the authority of the panel of judges who handled the case. This gesture was then protested by the National Commission for Child Protection. They demanded that the panel of judges immediately arrested the defendant, because it was feared that he will intimidate the witnesses and destroy evidence. This request was finally granted by the panel of judges and the

defendant was only detained in July 2022 after going through 19 trials.

Seeing the case of sexual violence that occurred in Selamat Pagi Indonesia School in Batu City, there are several things that need to be analyzed in order to prevent the repetition of similar incidents. *First*, pedophile perpetrator is someone who is considered good and has contribution to the victim's educational life. This shows that there is an unequal relationship between the victim and the perpetrator. These power and authority also cause the victim to not have the audacity to fight back. The perpetrator often bring up his contribution to the victims so that they always follow his wishes. In fact, it is not uncommon for victims to distort religious narratives, such as the obligation to obey teachers in order to commit these crimes. The case of sexual violence in Batu is also identical with this, the perpetrator is considered to have saved the victim by providing free educational assistance. Using this as a weapon, the perpetrator demanded the victim to obey all his orders.

Second, it is the threat from the perpetrator to the victim. Perpetrators of sexual violence often threaten victims not to report them to their families or the authorities. This threat can take the form of intimidation to the victim or even give material lure.⁴⁰ Both of these conditions are actually not beneficial for the victim; therefore, it takes courage to speak up and report the act of sexual violence. This fact can be seen in the sexual violence at Selamat Pagi Indonesia School. The crime of sexual violence at the school has occurred since 2009, but until mid-2021 no victim has made any reports because of the threat from the perpetrator. Even when he became a defendant, the perpetrator still dared to threaten the victim's family to prevent them from testifying at the trial.

Third, some victims did not dare to report what happened. They harbored the bitter incident

38 Some media said that there have been rapes committed by the perpetrators, but the researcher has been unable to meet the victims. The victims and their family might view the incident as a family disgrace, so there is no need to be revealed. Such psychological conditions need to be taken into account so that the victims and their family are brave enough to speak up the truth. Ayu explained the look on her sister's face which turned sad when she returned to the city. Ayu said that the classmate had been asked to give Julianto Eka a massage, but the sister cried and could not continue the story. The researcher repeatedly failed to contact the cell phone number. Interview with ayu was on August 02, 2022.

39 Interview with Rony (pseudonym/34 years old) and Sri (pseudonym/39 years old) were on August 9, 2022. Until the article was written, the incidence of sexual violence rose to the level of appeal.

40 Intan Permata Sari, "Hukuman Bagi Pelaku Pelecehan Seksual Terhadap Sesama Jenis," *Legitimasi: Jurnal Hukum Pidana dan Politik Hukum* 6, no. 1 (26 Juni 2017): 22–42, <https://doi.org/10.22373/legitimasi.v6i1.1842>.

and considered it to be a disgrace that should not be exposed to the public⁴¹. The cases that have occurred show that the new victim finally speaks up and reports the incident that happened to her after some time from the sexual violence case. Apart from being considered as a disgrace, it is possible that the victims did not immediately report the incident because they did not find a sharing partner who gave them support and encouragement to rise from the problem. The courage of the victim is one of the efforts to raise self-awareness for the whole community to be aware of sexual violence behavior.⁴² The patriarchal culture also causes the victim's family to feel ashamed and ultimately choose to remain silent. Moreover, sometimes it forces them to marry the victim to the perpetrator or evacuate the victim to another area.

Fourth, society stigmatizes victims of sexual violence. One of the reasons why they are extremely hesitant to report the incident is society's judgment towards those who are involved in sexual violence, whether perpetrators or victims, that they are both bad and do not have good social control. Such an assumption is especially very detrimental to the victim as a party that should be supported and protected. This assistance to the victim is important to boost their courage to speak up and also prevent them from taking steps that endanger themselves. A case as such happened to Novia Widyasari, one of the victims of sexual violence who eventually chose to end her life because there was no one to support her. In fact, she was accused by the perpetrator's family for being a woman who deliberately seduced the perpetrator into having sexual relations with the intention of getting married immediately. The accusations are heinous and caused her to be traumatized and depressed to an extent that she became desperate and committed suicide.

Fifth, the judicial process is complicated and convoluted. Victims of sexual violence who are reluctant to report to the police usually assume that the process is quite time-consuming and costly. The trial process for sexual violence in Batu also experienced the same thing. The perpetrators who had been determined to be defendants were not immediately arrested. He was only detained by the panel of judges after going through 19 trials at the request of the National Commission for Child Protection and the public prosecutor, because he was strongly suspected of intimidating the victim's witness. This kind of fact makes the victim feel pessimistic that the case will be handled quickly and accurately.

Then there are some experts who state that economic factors also affect the crime of sexual violence⁴³. Researcher do not agree with this assumption, because the economic condition of the victim is not the reason for the occurrence of sexual violence. In essence, every human being does not want a weak economic condition. The perspective that should be changed is not the fault of the economic condition of the victim who makes them vulnerable to sexual violence. However, it is solely the cunning act of pedophiles who deliberately uses all means to satisfy their sexual desires.

The practice of sexual violence by Julianto Eka to his students is a crime of sexual violence that violates human rights. The pedophile was proven to have violated the basic principles of human rights contained in Article 3 of the Human Rights Law. He was proven to have robbed freedom and damaged the dignity of others by committing a crime of sexual violence.

Sexual violence is one of the most serious human rights violations.⁴⁴ The Vienna Declaration

41 Christina Yulita, *A-Z Pelecehan Seksual: Lawan & Laporkan!*, (Jakarta: Komite Nasional Perempuan Mahardhika, 2012), 57–58.

42 Abdul Wahid dan Muhammad Irfan, *Perlindungan Terhadap Korban Kekerasan Seksual: Advokasi Atas Hak Asasi Perempuan* (Bandung: Refika Aditama, 2001), 109.

43 Harlen, "Pemenuhan Hak Santri atas Kasus Pelanggaran Hak Asasi Manusia oleh Oknum Pondok Pesantren," 203.

44 Human rights are inherent rights that exist in humans as a gift from God that must be protected and respected and must receive guarantees from the state. One of the rights of humanity is the right not to be enslaved in any way. See, Pasal 1 dan

and Human Rights in 1993 placed sexual violence as a form of denial and injuring of human rights principles.⁴⁵ Sexual violence as a form of gross violation of human rights is supported by Usman Hamid, the Executive Director of Amnesty International Indonesia, who criticized the notion that sexual violence is an ordinary crime. Usman Hamid refers to the Rome Statute in 2002, which explained that sexual violence is one of the gross violations of human rights. Sexual violence is parallel to the crime of genocide, war crimes, and crimes of aggression as a form of serious violation of human rights.

The enforcement of human rights will be in sync with the formation of the values of justice. The correlation between human rights and justice is an inseparable unity. Both are the main factors in building the nation's civilization, in which the two elements are not insulated by race, religion or national territorial boundaries. A civilized nation and state will uphold human rights and the norms of justice. As for countries that ignore the values of human rights and justice, they will be alienated and receive global sanctions from various countries in the world.⁴⁶

C. Implementation of *Maqâsid al-sharî'ah* as Enforcement of Human Rights for Victims of Sexual Violence in Batu City

Every law ordained by Allah is for the benefit and good of mankind. Likewise, Islamic law has distinctive characteristics, because it has a fairly high dynamic. The main basis of Islamic law is based on the Qur'an and Hadith, but still provides space for human reason to interpret (*ijtihad*) in accordance with universal life principles. The concept of *ijtihad* is what makes Islamic law always contextual in all conditions. *Ijtihad* is carried out in order to find out the main purpose of Islamic law. The main purpose of Islamic law

which aims for the benefit of humans is often called *maqâsid al-sharî'ah*.

The benefits contained in *maqâsid al-sharî'ah* are global and can be accepted by all elements of society (universal), and are in accordance with the theory of human rights. The concept of guarding religion (*hifz al-dîn*) in *maqâsid al-sharî'ah* correlates with Article 4 of the Human Rights Law, both regulations provide freedom and prohibit coercion in religious life. The Human Rights Law regulates human rights to life following the theory of *hifz al-nafs* in *maqâsid al-sharî'ah*, that everyone has the right to continue and improve their standard of living and safe from threats or slavery. All the norms contained in the *maqâsid al-sharî'ah* have a correlation. Someone who understands *maqâsid al-sharî'ah* correctly will minimize the occurrence of human rights crimes. Vice versa, violations of human rights will increase if there is a deviation from the values of *maqâsid al-sharî'ah*. Wael B. Hallaq sees the concept of *maqâsid al-sharî'ah* legislation as not just creating a set of theories, but also a form of increasing understanding, flexibility and adaptability to Islamic law.⁴⁷

Maqâsid al-sharî'ah consists of two words, namely *maqâsid* and *al-syarî'ah*. *Maqâsid* is a plural form of the word *qaşada - yaqşudu - qaşdan* which has the meaning of the will or certain goals. While *syarî'ah* has a definition as a method or way to a spring. *Syarî'ah* can also be interpreted as a good rule. While the definition of *syarî'ah* in the perspective of terminology is all the provisions of God that have been set for mankind in order to regulate all aspects, ranging from worship, *aqidah*, morals, and *muamalah*, which aims for the good of humans.

Through the various definitions above, Waḥbah al-Zuhaylî mentioned that the definition of *maqâsid al-sharî'ah* is legislation or the purposes and objectives contained in the legal provisions

Pasal 4 "Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia,"

45 Sri Indah Kinasih, "Perlindungan dan Penegakan HAM terhadap Pelecehan Seksual," t.t.

46 Christian Tomuschat, *Human Rights Between Idealism And Realism*, II (New York: Oxford University Press Inc, 2008), 107.

47 Wael B. Hallaq, *A History of Islamic Legal Theories : an Introduction to Sunni Usul al-Fiqh* (Cambridge: Cambridge University Press, 1997), 118.

that have been determined by Allah.⁴⁸ A similar definition was conveyed by Ahmad al-Khudri, he called *maqâşid al-sharî'ah* as the will or purpose of God in lowering regulations for humans to be safe in the world and the hereafter.⁴⁹ Some Islamic legal experts implement *maqâşid al-sharî'ah* with various different methods, but the differences lead to the goal of human benefit.

Al-Juwaynî divides *maqâşid al-sharî'ah* into two parts, namely: inductive understanding (*istiqrâ'*) of the texts of the Qur'an and inferences against the texts of the Qur'an.⁵⁰ Al-Juwaynî also mentions the aruriyat indicator as one of the important aspects of *maqâşid al-sharî'ah*, but the study is not specific. Then there is al-Ghazâlî who mentions *maqâşid al-sharî'ah* as the main guide for humans in living life. He also uses the aruriyat rule as an important instrument of *maqâşid al-sharî'ah*, but he only puts the theory down without elaborating further⁵¹. Abû Işhâq al-Syâtîbî classifies *maqâşid al-sharî'ah* into three levels, those are: *daruriyat*, *hajjiyat* and *tahsiniyat*.⁵² Al-Syâtîbî then explained the concept of *maqâşid al-sharî'ah*. Furthermore, there is Tâhir ibn Âşhûr who divides *maqâşid al-sharî'ah* into two parts, which are *maqâşid al-khâşshah* and *maqâşid al-âmmah*.⁵³

Various phenomena of sexual violence will be studied and analyzed with the *maqâşid al-sharî'ah* approach proposed by al-Syâtîbî, because al-Syatibi is considered more comprehensive and contextual in applying *maqâşid al-sharî'ah*.⁵⁴ The

method offered by al-Syâtîbî is still relevant and important to be studied and used as a guide in resolving disputes that occur today. According to al-Syâtîbî, the purpose of *maqâşid al-sharî'ah* can be studied in the perspective of Allah (*Syâri'*) and humans (*mukallaf*). It was through this concept that the terms *daruriyat* (primary), *hajjiyat* (secondary) and *tahsiniyat* (complementary) emerged. The interest of *daruriyat* is a basic need that must be fulfilled for the sake of human safety and existence. The interests of aruriyat have five important elements, namely: guarding religion (*hifz al-dîn*), guarding soul (*hifz al-nafs*), guarding mind (*hifz al-'aql*), guarding offspring (*hifz al-nasl*), and guarding property (*hifz al-mâl*).

The interests of *hajjiyat* are secondary needs which allow humans to experience supplementary convenience, therefore, the existence of *daruriyat* will not be disturbed even when the interests of *hajjiyat* are not fulfilled. Meanwhile, the interest of *tahsiniyat* is complementary need. If this need is not met, the existence of *daruriyat* will not be threatened at all and will not cause any difficulties for the mukallaf. In the principle, the concepts of *daruriyat*, *hajjiyat*, and *tahsiniyat* must mutually maintain and support the five elements above.⁵⁵

In this section, we will describe the prevention of sexual violence by using the theory of *maqâşid al-sharî'ah*. If we observe carefully, the rise of the phenomenon of sexual violence has the same origin. *First*, pedophile perpetrators usually do not immediately commit acts of sexual violence, but they first help victims with material and non-material things. In this condition, the victim sometimes has the feeling of having to repay the kindness of the perpetrator. It is not uncommon for pedophile perpetrators to ask victims to do activities together, such as helping

48 Wâbah al-Zuhailî, *Uşûl al-Fiqh Al-Islâmî* (Damaskus: Dâr al-Fikri, 1986), 214.

49 Ahmad al-Hijji al-Khudri, *al-Madkhal al-Fiqh al-Qawâ'id al-Kulliyah* (Kuwait: Dâr al-Ma'ârif, 1979), 173.

50 Imâm al-Haramain Abû al-Ma'âli 'Abd al-Mâlik bin 'Abd Allah al-Juwainî, *al-Burhân fi Uşûl al-Fiqh*, vol. II (Mesir: Dâr al-Anşâr, t.t.), 107.

51 Abû Hamîd bin Muhammad al-Gazâlî, *al-Muštaşfâ* (Beirut: Dâr al-Kutub al-Ilmiyah, 1994), 208.

52 Al-Syâtîbî, *al-Muwaffaqât fi Uşûl al-Syari'ah*, 1:122.

53 Moh Toriquddin, "Teori Maqashid Syari'ah Perspektif Ibnu Ashur," *ULUL ALBAB Jurnal Studi Islam* 14, no. 2 (30 Desember 2013): 184–212, <https://doi.org/10.18860/ua.v14i2.2657>.

54 Zulkarnain Abdurrahman, "Teori Maqasid Al-Syatibi Dan Kaitannya Dengan Kebutuhan Dasar Manusia

Menurut Abraham Maslow," *Jurnal Ushuluddin: Media Dialog Pemikiran Islam* 22, no. 1 (27 Agustus 2020), <https://journal.uin-alauddin.ac.id/index.php/alfikr/article/view/15534>.

55 Nofialdi Nofialdi, "Maqasid Al-Syari'ah Dalam Perspektif Syatibi," *Al-Fikra: Jurnal Ilmiah Keislaman* 8, no. 1 (31 Juli 2017): 128–55, <https://doi.org/10.24014/af.v8i1.3807>.

the perpetrator's work, cleaning the perpetrator's room and so on. In this condition, the victim must have a firm attitude to refuse the request of the pedophile.

The refusal of the victim is not an act that does not know the return, but as a form of prudence and implementation of protecting the soul (*hifz al-nafs*). Carrying out activities alone with the opposite sex without the knowledge of others might be the entrance to sexual violence. Actions like this may be considered as excessive anxiety, but on the other hand, this attitude can be justified in order to maintain the safety of the soul. It is because some perpetrators of sexual violence tend to be dark and have the heart to kill the victim. Islam explicitly prohibits alone activities between two people of the opposite sex, because these activities are deemed to approach adultery which makes it prone to sexual violence. A firm attitude to avoid adultery and sexual violence is an act of protecting offspring (*hifz al-nasl*).

The implementation of protecting the soul (*hifz al-nafs*) was practiced by Yurika's parents. They insisted on bringing his daughter home for safety. They feared that their daughter had been abused and had become a victim of sexual abuse by the school leader. Protecting life for safety is a basic human right, and such concepts are consistent with the methods of *maqasid al-shari'ah* that place the preservation of life (*hifz al-nafs*) as the primary component of religious purpose. Therefore, dangerous measures should be avoided. Even Islam allows one to consume foods that are unclean when no other food is found in an emergency situation, because not consuming anything at all might endanger their safety and survival.

The implementation of *maqasid al-shari'ah* has also been practiced by Airin. She openly rejected the prose to engage in private activities and had to create some white lies to the perpetrator as an attempt of avoiding wrongdoing that could lead to sexual violence. Lying for good is permissible in religion, just as Ibrahim lied when asked about the destruction of idols. Avoiding misconduct

by resorting to deception is a form of guarding religious values (*hifz al-dîn*). Resistance includes avoiding adultery and the implementation of the concept of preserving offspring (*hifz al-nasl*) in *maqasid al-shari'ah* theory.

Second, it is the relationship between the perpetrator of sexual violence and the victim. Various facts show that the pedophile already knows the victim. The relationship can be in the form of family members, teachers with students, lecturers with students, or fellow co-workers. Sexual violence that occurred in Batu City occurred between teachers and students. This relationship is almost similar to incidents of sexual violence in various regions. Sexual violence that occurs in educational institutions usually misuses religious narratives, such as expecting blessings, obtaining useful knowledge, and being obedient to religious orders.

Such narrative is in fact quite persuasive for students or santri, because they consider teacher as a person who should be imitated. Such an assumption is true, but unfortunately not all teachers or ustadz have the privilege to always do the right thing. Every teacher's word and action need to be filtered and students do not always necessarily have to carry out their orders. Sexual violence at Selamat Pagi Indonesia school in Batu City was caused by the perpetrator's request for a massage to his student. The request was accompanied by a bluff that made the student feel intimidated, resulting in a criminal act of sexual violence. This kind of mode is quite common in several educational institutions, from elementary to university levels.

Victims can minimize such situations by refusing or running away from the perpetrator. Even though in reality, the perpetrator might threaten the victims, give false hope on something, or deceive victims based on his 'power' that make them unable to refuse. The victims are allowed to be suspicious and have prejudices on anyone, including their teachers, if they are ever committing an act or speaking words which presumably lead to sexual violence. Suspecting and rejecting the

teacher's actions that lead to sexual violence is one form of the command to protect religion (*hifz al-dîn*). Islam and all religions condemn the crime of sexual violence, even the Prophet Muhammad once gave guidelines so as not to be deceived by anyone who invites disobedience, even if it was done by educated people.⁵⁶

There are several actions taken by victims of sexual violence based on the theory of *maqâsid al-sharî'ah*. First, try your best not to blame yourself. This condition is often experienced by victims of sexual violence, because they feel as if they no longer have self-respect and consider themselves a disgrace to their family and society. This kind of perception will clearly harm the victims because it has an impact on their psychological and mental health. This kind of action is in contrast to the command to protect the soul (*hifz al-nafs*) contained in the theory of *maqâsid al-sharî'ah*. The description above does not mean blaming the victims' actions, but trying to give them support so that they can survive again by choosing actions that do not endanger them. The community around them must provide constructive support, because the victims must receive protection and obtain the right to self-development to improve the quality of life. The right to self-development is contained in Article 11 of the Human Rights Act. Actions for soul restoration and self-development are mandatory and in accordance with the *daruriyat* (primary) rules in *maqâsid al-sharî'a*.

Second, consultation with health institutions. This action is needed so that the victim knows the impact of sexual violence they went through. One of the effects of sexual violence suffered by the victim is injury to the reproductive organs. These wounds must be examined as evidence of sexual violence, and these wounds must also be treated so that the trauma of the victim is not prolonged. It is also important to check with health services, especially if the sexual violence is in the form of

rape. If the victim becomes pregnant because of the rape, the perpetrator must be fully responsible for the victim and the fetus she is carrying. This form of responsibility can be carried out in the form of marriage, only if there is consent from the victim and his family. If the victim is forced to marry the perpetrator of the rape, it is feared that a prolonged trauma will occur. The perpetrator of rape is obliged to provide for the fetus conceived by the victim, while the victim has the right to marry whom she wants and no one should force them to marry the perpetrator of the rape.

The perpetrator must be held accountable for acknowledging the child conceived by the victim and providing a living for them. This recognition is in the language of *maqâsid al-sharî'ah* as a form of maintaining offspring (*hifz al-nasl*), because every child has the right to know their parents who will act as guardians of the child. The victim's consultation with the health institution must be responded immediately so that it can provide the best solution. The slow response actually causes the victims to not trust the institution and is worried that they will take actions that endanger themselves. The right to have a family and to continue offspring is the most basic human right. this provision is contained in Article 10 of the Human Rights Law.

CONCLUSION

The rise of sexual violence cases has become an interesting national phenomenon to be studied and analyzed, especially since sexual violence is actually carried out by pedophile perpetrators who have relationships with victims. Even sadder, sexual violence is often carried out in educational institutions that should be a place for the transfer of ethics and knowledge. The obedience of students to the teacher is actually misused by pedophiles in carrying out acts of sexual violence. There are a lot of unscrupulous teachers who threaten and use violence to their students to satisfy their sexual desires.

Perpetrators of pedophilia deserve severe punishment because the actions they have

56 The text of the hadith is *في المغزوف لا طاعة في معصية. إنما الطاعة*. See, Abû 'Abd Allâh Muḥammad ibn Ismâ'îl ibn Ibrâhîm ibn al-Mughîrah ibn Bardizbah al-Ju'fî al-Bukhârî, *Ṣaḥîh Bukhârî*, vol. IV (Beirut: Dâr Kutub al-Ilmiyah, 1987), 207.

committed have violated freedom and human rights. Meanwhile, the victims of sexual violence must receive protection and assistance for their psychological recovery. Appropriate treatment for victims and appropriate punishment for perpetrators is an indicator of upholding justice.

Maqâsid al-sharî'ah is an alternative for preventing and handling victims of sexual violence. A holistic understanding of the values of *maqâsid al-sharî'ah* (*hifz al-nafs, hifz al-nasl, hifz al-aql, hifz al-dîn and hifz al-mâl*) is believed to be able to minimize cases of sexual violence. Obedience to the teacher is not something that absolutely must be done, it is necessary to review the context with the objectives of the *sharî'a* (*maqâsid al-sharî'ah*). Rejecting orders that are contrary to *maqâsid al-sharî'ah* is a form of freedom from human rights.

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