

### Maqashid Syariat Asy-Syatibi Review of Marital Rape in the Sexual violence crime Law

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**Abstract:** *In today's life, there are many cases that we often hear about or see that are directly or indirectly related to external sexual violence or marital rape. Therefore it is necessary to formulate rules that can reduce the number of violence, especially marital rape which is a concern for everyone to get married. Maqashid Syariah is one of the appropriate alternative sources of law originating from sources of Islamic law. The following research is a qualitative descriptive research equipped with library research methods with a normative juridical approach. The formulation for regulation of domestic violence in Law Number 12 of 2022 concerning the Law on Sexual Violence has fulfilled the dharuriyat category or primary needs in Maqashid Syariah related to kulliyat al khams, one of the main things, namely Hifzu al-nafs (life protection). In this position, the Act on Sexual Violence can use Maqashid Syariah as an alternative point of view. By formulating these regulations, the concept of Maqashid Syariah can be used for the purpose of common interest has been implemented. With regulations like this, it can be a benchmark for reducing domestic violence.*

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#### Introduction

Today, violence against women is an important topic that is never finished for discussion, this is because women are often the object of violence itself, where in the social environment women are still placed and considered weaker than men. Violence experienced by women can happen anywhere. Within the scope of the family; women as wives and children, women in the workplace, even in public places whether in the form of sexual harassment, rape, murder, abuse, abortion and so on (Isima, 2021). This can happen within the scope of marriage or outside marriage.

Marriage does not only have a physical or physical element, but also an inner or spiritual element which has a very important role in creating a happy family based on Belief in the One and Only God. Marriage is not only a legal issue between husband and wife but also has something to do with religious issues (Solihah & Amalia, 2022). This is different from the provisions of Article 26 of the Civil Code which views marriage as a civil

matter only, where religious issues are not an obstacle to marriage (Kamilah, 2018).

As a logical consequence of the existence of a marriage, rights and obligations will be born that must be fulfilled by each partner. Fulfillment of rights by husband and wife is equal and proportional to the burden of obligations that must be fulfilled. Husband and wife bear a noble obligation to uphold the household which is the basis of the structure of society. The rights and position of the wife are balanced with the rights and obligations of the husband in the household and social life together in society. Each party (husband and wife) has the right to take legal action (Bastiar, 2018).

Still in Komnas Perempuan's Catahu, Annual Notes for 2021 total reports regarding wife rape is 100 cases for 2020. If Compared to 2019, case data reached 192 reported cases. This means that from this data it is illustrated graphically that the number of rape cases has increased wife (marital rape) in Indonesia (Isima, 2021).

Islam is really concerned for individual protection, its protection is only about material, but also moral. Islam is present and guards every individual life, including protecting all the things as the basic of life and the property they had, their descendants, intelligence, and religion. Those five things are called as *kulliyat al-khams*, that is five core things which need to be kept by Islam for its people (Husain Jauhar, 2018).

Getting balance between rights and obligations of husband and wife and living in harmony with full of happiness is certainly something which married couples really hope for. However, those happiness and harmony will only become a dream if there is a violence in a family life, particularly sexual violence crime.

Basically, violence is both verbal and non-verbal behavior committed by a person or group to others, which lead negative effects physically, emotionally and psychologically for the victims. In Indonesia Dictionary, violence is defined as a person or group's action which lead others people injury or death, and causes physical damage or other people's property.

Domestic violence has become the focus of law enforcement in Indonesia, it is proven by the existence Anti-Domestic Violence Law, which also includes the prohibition of sexual violence crime in marriage. One of the most vulnerable forms of sexual violence crime in marriage is wife rape, or better known as Marital Rape. It does not only occur outside but also within marriage.

So far, sexual violence crime by husbands against wives which is called as marital rape has rarely appeared in public. Husbands who force sexual activity have never been disclosed by their wives. It caused by the wife's weak position in the family and society. Moreover, the assumption of public which consider that men have autonomous rights in the family. It surely makes men feel entitled to do anything to women. Ironically, most of them think that the marriage bond is something which legally legitimizes their power over women (Ayu, 2019).

The rise of marital rape cases in Indonesia is of particular note for National Commission on Violence against Women, where it considers that patriarchy and stereotypes attached to gender are the main reasons of the

high number of marital rape cases. It can be seen from how to think and behave that the wife should serve their husband's need, if they refuse to give sexual services, they will be judged as insubordinate wife. National Commission on Violence against Women noted that in 2017 there were 172 cases of marital rape, in 2018 there were 195 cases, which is only considered as the top of the iceberg from other unreported cases, because National Commission on Violence against Women itself believes that the number of women who experienced marital rape is higher than those who reported (<https://Asumsi.Co/Post/Marital-Rape-Menikah-Bukan-Kontrak-Consent>, n.d.).

Forcing for having sexual activity certainly violates the wife's rights, because sex is also her right. Rape implicates the husband enjoys it, but the wife does not, and even it hurts her. Without desire and good communication between them, it is impossible to get mutual satisfaction. This kind of relationship is as same as the repeated oppression toward the women as the victims of rape by their own husbands, which cause many negative consequences for them. Starting from their physic, such as damage of reproductive organs, to the psychological which will affect many things. By these cases, will the public still look down on the marital rape cases, while women will continue to be hurt both physically and psychologically (Ayu, 2019).

Based on the various problems that authors have raised, where there is a paradigm which needs to be clarified regarding the justification of marital rape in the society, as well as the importance of disclosing criminal responsibility in the provisions of marital rape as a crime in the Sexual violence crime Law.

The term domestic violence in international literature is used in several versions, such as Domestic Violence, Family Violence, and Wife Abuse. The word domestic or family indicates that violence is committed by family members against other family members, although most cases occurred are spouse or wife abuse. Since partners are not always wives, they can be wives to be or partners who live together in one house. Domestic violence can be committed by women to men (wife to husband) or vice versa. However, the victims of domestic violence are generally women (wives, children, spouses, parents, or maid) due to differences in physical strength and emotional side which tend to appear in men, meanwhile women tend to be physically weaker and show a gentle nature.

Even though the elimination of marital rape has been conducted in Indonesia and the sexual violence crime law has even issued, but marital rape are still occurred in the society. Marital rape perpetrators come from various backgrounds, regardless of religion, ethnic, culture, level of education, social status, economic conditions, position, and others. Marital rape crimes which occurred in the society are due to causal and supporting factors for the occurrence of those crimes, including; Patriarchal culture, misunderstanding of religious teachings, and imbalance of power in the family (Syaifuddin, 2018).

Most wives of Marital Rape victims got difficulties in making decisions for themselves. They don't think only for themselves, but also their children,

husband and whole family. Their ways of thinking due to the construction which requires them to keep in touch with women's responsibilities as parties who are expected to be mothers and wives who will later be fully responsible for caring their children toward other people. This construction is closely related to positioning gender (Ayu, 2019).

Apart from the fact that social construction has finally made wives being afraid for sharing what has happened to them, it turns out that there are a lot of debates in the society regarding drafted regulation in the Law on Sexual violence crime Elimination which are considered to be more detailed in regulating marital rape than Domestic Violence Law. This is supported by the result of researches or articles which pros or cons regarding marital rape, so it becomes interesting to be discussed.

Maqashid Syaria is a concept which emphasizes the purpose for giving favor and avoiding harm. This is in line with Ibn Al-Qayyim who stated that the principles and basic of Islamic law are giving favor for the people in this world and in hereafter. According to him, Islamic law is entirely fair, brings grace, contains favor and brings wisdom (Ayu, 2019).

This research will focus on the ideas that arise from Maqashid Syaria regarding the formulation of marital rape rules which are included in the Law on the Elimination of Sexual violence crime. Then because the formulation of the rule of law is included in the area of criminal law, this research will also focus on the criminal provisions in the formulation through the theory of criminal responsibility. In accordance with the formulation of the problem, this study aims as follows: 1. To find out the Maqashid Syaria review of the provisions in the formulation of the Marital Rape legal rules in the Law on the Elimination of Sexual violence crime 2. To find out Criminal Liability in the criminal provisions in the Law on the Elimination of Sexual violence crime

### **Research Method**

Researchers used a type of library research (library research), namely a study by writing, clarifying and making data obtained from various written sources. Then analyze literature sources related to the material and focus on examining the problems discussed (Muhajir, 1983). There are several kinds of library research. Some are in the form of general literature (textbooks, encyclopedias, monographs, and the like), special literature (journals, research bulletins, theses, dissertations, and others), as well as cyber literature (internet) (Zed, 2014). The term approach in the dictionary is defined as a process, deed, and way of approaching an object. In law terminology, the approach is an attempt within the framework of research activities to establish a relationship with the person being studied; also means the methods to reach an understanding of the research problem. The approach used by researchers is the Juridical Normative and Sharia Approach.

The analysis process in this study was carried out through three stages, including; (1) Data reduction, namely the process carried out to organize data into a more systematic form; (2) Displaying data, namely the process carried out to describe research data in the form of tables containing excerpts from

interviews that have been translated into English; (3) Data verification, is the process of concluding data based on the classification of data that has been obtained. Of the three stages it is possible to perform an analysis of the data that has been classified inductively to then be described as a basis. Interpretation of the data (Fernando et al., 2022). This is done with the aim of obtaining quality and factual data in accordance with the literature obtained from reading sources. Data analysis is the process of organizing and sorting data into patterns, categories and one big description. Data analysis techniques aim to describe and solve problems with the data obtained. The analysis used is qualitative data analysis, namely efforts made by working with data, organizing data, sorting it into manageable units, synthesizing it, looking for and finding patterns, finding what can be told back with data originating from reading literature.

## **Discussion and Result**

### **Maqasid Syaria Asy-Syatibi**

Etymologically, Maqashid Syaria is a combination of two terms, namely al-maqasid, and al- syaria. Maqasid is a plural word from maqshud, qashd, mashd orqushud derivation from the verb qashadayaqshudu which has the meaning towards a direction, a middle goal, fair and not exceeding limits, a straight path, in the middle between excess and deficiency (Toriquddin, 2014).

The terminology definition of maqasid Syaria is defined as the values and meanings that are goals and are intended to be realized by Allah as the maker of sharia, from the making of sharia itself and the law studied by mujtahid scholars from sharia texts.

Al-Syathibi revealed about sharia and its functions for humans as he stated in the book al-Muwafaqat, namely " *Indeed, the Shari'a was established with the aim of establishing (realizing) the favor of mankind in this world and the hereafter*". from that opinion, it can be concluded that Maqasid Syaria is the goodness for all people (Mutakin, 2017).

There are several opinions which are in line with Al-Syathibi. Fathi al-Daryni stated that these laws did not specifically related to the law itself, but it was made to provide benefits.

Maqasid Syariah is a concept that emphasizes goals try Islamic law in an effort to maintain the benefit of life human beings, with the aim of bringing benefits and keep away from danger. Ibn al-Qayyim al-Jauziyyah, said that the real principles and basis of income Islamic law is for the benefit of the servant in this world and in the hereafter (Ayu, 2019). According to him, Islamic law is all fair, brings mercy, contains maslahat and brings wisdom. Imam al-Ghazali, argues, that maslahat is basically an expression of gain benefits and avoid harm. the phrase associated as the most extensive rules, scope and coverage (Bakrie, 1996a).

In addition, Muhammad Abu Zahrah gave an opinion that Islamic teachings contained real benefits. The theory of Maqasid Syaria cannot be separated from the theory of Al-Syathibi as the first one who introduced this theory completely as a method of philosophical thought (Yakin, 2015). Maqashid Sharia is a scientific field which stands alone, so concrete and



comprehensive definitions given by classical scholars will not be found (Mutakin, 2017).

### **The Development of Maqashid Syaria**

Maqashid Syaria in Islamic law has developed. In its development, it is not only found in terminological but also in methodological aspects. Jasser Auda's offer to redefine the concept of maqashid sharia implies a message that maqashid sharia can be used as its own method for studying Islamic law issues.

Maqashid Syaria in the millennial generation has placed for sharia science developers with various knowledge improvisations as what was developed by Jasser Auda with the concept of maqashid sharia as a system in philosophy of law. By involving many kinds of disciplines fields (combining scientific with religious) Jasser Auda views the problems broadly, so religious issues is not the only one because there are so many other issued and modern problems. The concept offered is not only classical maqashid which only maintains, but also develops, realizes justice, human rights, freedom and comprehensiveness in six foundations including: cognitive, comprehensive, transparency, linkages, multidimensional and goal-oriented. The long journey from the beginning of maqashid to present has experienced many paradigm shifts from the classical fiqh to modern scientific, from exclusive to inclusive thinking, from fiqh proposals to systems philosophy.

### **The advantage and Implementation of Maqashid Syaria**

Maqashid sharia is able to provide benefits for the one who studies Islamic law, that person will be able to get the wisdom of being prescribed by a law either partially or universally. Besides that, it will help to strengthen comparative law issues by selecting or observing the goals of maqashid syaria to create favor and prevent harm.

Maqashid Syaria consists of two words, they are *māqashid* and *syarī'ah* which are related between one to another. *Maqāshid* means intentionality or purpose, the word *maqashid* is the plural form of the word *maqsud* which comes from the syllable *qashada* which means to wish or intend. *Maqashid* means things that are desired and intended. Meanwhile, *Syarī'ah* literally means the law of Allah, whether it is the decree of Allah SWT, or determined by the Prophet as an explanation of the legal provisions determined by Allah SWT or an effort produced by mujtahid based on what has been determined by Allah or explained by the Prophet. Since, what is connected with the word sharia is the word "objectives or purposes". So, the word sharia means creating the regulation to be syar'i. Thus the word maqashid syaria means what is intended by Allah in determining and establishing the laws, and what are the objectives that Allah wants to achieve in establishing a law.

The implementation of Maqashid syaria through the application of Islamic laws which is determined based on religious texts is an essential *maslahah*. It refers to the maintenance of five things; (1) Maintaining religion (*al-Muhafazhah ala al-Diin*); (2) Maintaining soul (*Muhafazhah ala an-Nafs*); (3) Maintaining reason (*Muhafazhah ala al-'Aql*); (4) Caring for descendants

(*Muhafazhah ala an-Nasl*); and (5) Maintaining wealth (*Muhafazhah ala al-Mal*) (Rudi Setiyobono et al., 2019).

Based on Abu Ishaq al Syatibi's research, the levels of maqashid syaria as formulated in the five above are divided into three levels which include:

- 1) Primary needs (*Dharuriyat*), are the basic for getting human rights which are related whether to religion or the world, including maintenance of religion, soul, mind, descendants and wealth. basic needs in the form of food, drinks to survival. If the basic needs are ignored threatens the existence of the human soul.
- 2) Secondary needs (*Hajjiyat*), are everything is outside five things above, but they are intended to relieve difficulties, inconveniences, narrowness and *ihthiyath* (being careful) for five things mentioned. recommended for trying to get food that is halal and delicious. If these activities are ignored will not threaten the existence of life human beings, but can only complicate his life.
- 3) Tertiary needs (*Tahsiniyat*), it is also called as complementary needs, they are the level of needs which don't threaten the existence of five things above and they will not give difficulties if they are not fulfilled. arrangement set how to eat and drink This activity is only related to decency and ethics. Absolutely no threat to the existence of the soul human or complicate it. (Abdurrahman, 2020)

The realization of maqasid sharia is that Muslims are obliged to take care of their religion, soul, intellect, lineage, and wealth. As the maqasid of sharia is generally understood as the purpose of setting and revealing Islamic sharia to create goodness, safety, and happiness, on the other hand, avoiding ugliness, difficulty and damage that can threaten life and the existence of life. (Fikri et al., 2023)

### **Definition of Marital Rape**

Marital rape comes from two words, marital which means everything related to marriage and rape which means sexual violence crime. So, marital rape can be interpreted as sexual violence crime which is occurred within a marriage. Even though a wife is basically obliged to serve her husband. If she is not excited to serve him, she may offer or postpone it. And for a wife who is sick or feels unwell, there is no responsibility of her to serve her husband until she is good. If the husband forces her, he has broken the principle of *masyaroh bil ma'ruf* by abusing his wife whom he should protect (Mas'udi, 1997).

Madzhab scholars view '*azl (coitus interruptus)*', that is taking male genital out from female genital when the semen will come out is one of sexual violence crime. Umar said:

*"The Prophet Muhammad SAW forbade issuing semen come out of wife's genital without her approval."* (H.R Ahmad and Ibn Majah; Al-Muntaqa II: 564) (Aladip, 2012).

In line with protecting the wife's right to enjoy her sexual activity, by referring to the hadith above, it is clear that in having sex, especially in the climax, a wife is not only an object but she is a subject too. It is clear that the holly Qur'an's perspective prohibits sexual violence crime from a husband to

her wife. It contradicts Islamic principles regarding sexuality in marriage. From a macro religious perspective, sexual violence crime is a humanity violation. Husband and wife should band together, share and care one to another to solve their problems fairly based on mutual agreement, don't base it on momentary interests.

The issue of marital rape is closely related to the discourse on gender discrimination which generally focuses on several points, where one of them is the issue of violence experienced by women. Even though various regulations and policies have been constructed and everyone agrees that violence is intolerable thing, the fact of violence against women still occurs and increasingly continue. Violence against women can be occurred everywhere, whether at home, at work or even at public places.

### **Background of the Sexual violence crime**

Violence against wives has never been defined as a social problem. As a result, it is almost impossible for a wife to ask for help to deal with her husband's violence. The position of the wife in a family is inseparable from the social system which surrounds her and the split roles between husband and wife, thus the wife is placed in a vulnerable position toward violence. In the family, a husband is considered as the center of power and the wife should be under his authority. The wife is responsible for maintaining harmony and discipline in the family. Ironically, this split is not balance. The wife should support the husband's career to get success, she needs to be gentle but sacrifice her personal interests.

Problems will come up when the husband does not live up to the same values of love as his wife, the sense of self-esteem of men as a leader makes him see the a family as an institution for preserving his authority and power, because a man will firstly get recognition as a leader in a family. Male as perpetrators of domestic violence will maintain their leadership power for their family by using physical force to accuse women. It is the men's back up toward women's Resistance because they consider as the leaders and controller in their family.

Among the potentials given by God, sexual is one of them, including sexual desire. Lust is given in the process of human creation, therefore lust becomes a natural for humans. Domestic violence, especially violence against wives, will not be occurred if there is no cause. In Indonesia, violence against women is one of the negative things which is unconsciously happened and it continues hereditary.

Several factors lead husband violence against wife includes: (1) most of society raise their sons by cultivating their belief that sons should be strong, courageous and intolerant. (2) Men and women are not positioned equally in society. (3) The perception of violence which occurs in the household should be kept because it is a secret, it is not a social problem. (4) Misunderstanding of religious teachings about regulation for educating wives, where the wives should obey their husband, so the perception arises that men can dominate women. (5) The culture that wives depend on their husband, especially for their economy. (6) Unstable personality and psychological condition. (7) they have ever been the victims of children abuse (8) The culture that men are



considered as superior but women are inferior. (9) Doing imitation, their parents did violence and they imitate what their parents did. Unstable personality and psychological condition.

### **The Effect of Marital Rape**

The physical impact of domestic violence can cause permanent disability and death, it can also have a psychological and social impact on the wife. Psychological violence can damage self-esteem, cause confusion and destroy the wife's mental. Violence against wife is often accompanied by children abuse. The long-term effects of violence against the wife often lead to cruel treatment of children and this pattern will continue from violence in the family to raise serious psychopathological problems in the wife and other problems in the family.

Marital Rape will cause injury for female genital or other physical injuries. It will happens if the husbands do sexual activity every day for a long time, or they are under the influence of alcohol or drugs, or they do violence when they are having sex. In some cases, the wife may even get facial bruises, head injuries, split lips, broken front teeth, and painful genital. This is usually caused by the husband's rough treatment in doing sexual activity when their wives are tired or asleep. Another result of forcing sex activity when the wife is tired, it should be known that tired is one the factors which makes wife difficult in giving birth, premature birth of babies, and even miscarriage. When the husband force his wife to have sex through anus, it will injure his wife's anus, make his wife throw up, sexually transmit diseases, and even be infected by HIV/ AIDS. The wives who are physically injured due to Marital Rape usually don't want to see a doctor. They don't want to explain the real cause of their illness because they don't want share their private life and avoid it to be known by others.

Most wives of Marital Rape victims find it more difficult to make decisions for themselves. They don't only think for themselves, but also their children, husband and the whole family. This way of thinking becomes a typical way of women's thinking as a result of a construction which requires them to "always keep in touch and be responsible for women as the one who are expected to become a mother and wife, the one who will later be fully responsible for caring her children and others". This construction is closely related to gender positioning.

Marital Rape's is the problem of husband's sexual violence crime against his wife which leads to sexual violence crime. This is because Marital Rape contains several factors of sexual violence crime as in regular rape. Even though, in regular rape the perpetrator and the victim are not husband and wife, but they are in the same essence, that is sexual abuse. It is clear what are the reasons of Marital Rape and its impact on his wife, children and family. Because the physical and psychological effects of Marital Rape are quite bad. So, it is the time for society, religion and the state to stop it (Ayu, 2019).

**Maritale Rape in the law on Sexual violence crime**

Basically, before Law No. 12 of 2022 was made, there is already a law in Indonesia that regulates rape in marriage, but it's not clear and detailed about the case and the sanctions. Some legal theorists say the law 23 of 2004 concerning Eradication Marital Violence has rules about marital rape though not expressly stated internal rape marriage in the description of the article contained therein (Zahara, 2021).

It can be seen when referring to Law no. 23 of 2004 concerning the Elimination Domestic Violence that all forms of acts against someone especially a woman who causes misery or physical, sexual, psychological suffering and/or neglect of the household including threats to commit acts, coercion, or deprivation independence unlawfully within the scope of the household, that is categorized as domestic violence. In essence in Law no. 23 of 2004 concerning PKDRT only provides specifications generally associated with crimes that violate the law on household scope. Unlike Law no. 12 of 2022 concerning Crimes of Sexual Violence which focuses on an action related to sexuality in the household. In the sense of the Law on Sexual Violence only become a complement to previous laws such as Law no. 23 of 2004 concerning PKDRT (Irham et al., 2021).

Marital rape is rape that occurs within a marriage bond. This is regulated in Article 4 of Law no. 12 of 2022 concerning Crimes of Sexual Violence which reads: "(1) Crimes of sexual violence consist of: c. forced contraception; d. sterilization force. (2) Apart from the criminal act of sexual violence as meant in paragraph (1), the criminal act of sexual violence also includes h. domestic sexual violence". And Article 5 states "Any person who engages in non-physical sexual intercourse directed at the body, sexual desires, and/or reproductive organs with the intention of degrading a person's dignity based on his sexuality and/or decency, shall be punished for non-physical sexual harassment, with a maximum imprisonment of 9 (nine) months and/or a maximum fine of Rp. 10,000,000.00 (ten million rupiah)"(DPR RI, 2022).

And it is stated that in article 6 of Law no. 12 of 2022 concerning Crimes of Sexual Violence which reads: "Any person who commits physical sexual acts aimed at the body, sexual desire, and/or reproductive organs with the intention of placing someone under his authority unlawfully, both inside and outside marriage with a maximum imprisonment of 12 (twelve) years and/or a maximum fine of Rp. 300,000,00.00 (three hundred million rupiah)". The above has explained what constitutes domestic violence, so it is not only rape in marriage, but the many types and sanctions are also clear for the perpetrators in the law.

**Review of Maqashid Syaria toward Marital Rape in Sexual violence crime**

The Law on Crime of Sexual violence crime is a special law proposal which is focused on protecting society from sexual violence crime especially against women and children. Inequality of gender is one of the reasons of violence in society, either physical or sexual. Violence can be occurred both in domestic and public spaces.

The crime of sexual violence crime generates many pros and cons in the society, it creates a lot of demonstrations of several communities as a form of rejection or support for this this sexual violence crime law(DPR RI, 2022). In this position, TPKS can use Maqashid Syaria as an alternative reference. The meaning of Maqashid Syaria according to Abdullah Yusuf Ali in Diyan Putri Ayu, is everything which is used or determined by Allah SWT in Islam to regulate its people's life (Ayu, 2019). Meanwhile, Akhmad al-Raisuni in Fathurrahman Djamil explained that in terms of language Maqashid Syaria means objective prescribed by Islamic law, because it is the main discussion about issue of wisdom and cases which is created as the basis of legal development for the implementation of a law (Djamil, 1999). The content of Maqashid Syaria or law objectives is providing the favor for the people. That favor based on analysis of Maqashid Syaria is not only seen technically, but also dynamically and the development of law is seen as something which contains philosophical values prescribed by God for humans.

Maqashid Syaria is a concept which emphasizes the purpose of Islamic law implementation as an effort to maintain the favor for human life, with the aim to bring benefit and avoiding harm. Ibn al-Qayyim al-Jauziyyah stated that the principles and Islamic law point of view are actually for giving the favor for the people in this world and in hereafter. According to him, all Islamic laws are fair, bring mercy, contain *maslahah* and bring wisdom. Meanwhile, Imam al-Ghazali argued that *maslahat* is basically an expression of obtaining benefits and rejecting harm. This expression is categorized as widest regulation (Bakrie, 1996).

A review of Maqashid Syaria toward formulation of marital rape regulation in sextual violence law can provide corrective arguments it refers to Maqashid Syaria as an Islamic law, then Imam Asy-Syatibi has explained the concept of protection, which consist of *Muhafazhah 'ala al-nafs*, that is self-protection and *Muhafazhah' ala al-nasab*, that is descendant protection. So, it can be interpreted that the concept is intended to protect oneself from all kinds of dangers, so this is what makes the elimination of sexual violence crime a law.

Asy-Syatibi explained about how to maintain *al-umurudh dharuriyah* which was stated by Imam Juwainiy that in human life should be there favors in it, so these things are the basic of existence of a life(Ayu, 2019).

In maintaining *al-kulliyyat al-khams*, there are several aligned goals between the provisions on marital rape and Maqashid Syaria, they are: *Hifzu al-nafs* (protection of the soul). Violence against human dignity such as domestic violence is an act of discrimination which leads to intervene the weak one. In fact, the intimate relationship itself for both husband and wife is a right. Based on the authors' opinion, with a lot of writings of classical books which guide intimate relations between husband and wife, they are the forms of previous scholars to protect both of their souls for avoiding arbitrariness.

Maqashid Syaria is the goal of Islamic law, it has certainly prohibited domestic violence based on terms of studies. The holy Qur'an clearly prohibits sexual violence crime of husbands against wives because it contradicts the

fundamental of Islam about sexuality in marriage. From a macro religious perspective, sexual violence crime is a humanity violation.

This also breaks the laws in maintaining *al-kulliyat al-khams*, that is *Hifzu al-nasl* (protection of honor and descendants). In the article 11, it is explained that sexual violence crime also occurs in the family. So, if a husband commits sexual violence crime against his wife, he has essentially violated the principle of *maqashid syaria* by abusing the one whom he should protect. Even the Scholars of Madzhab explained about *'azl (coitus interruptus)*, that is pulling male genital out of the female when the semen is going to come out is part of sexual violence crime which can then lead to sexual violence crime if it is done.

“Men are the caretakers of women, as men have been provisioned by Allah over women and tasked with supporting them financially. And righteous women are devoutly obedient and, when alone, protective of what Allah has entrusted them with. And if you sense ill-conduct from your women, advise them ‘first’, ‘if they persist,’ do not share their beds, ‘but if they still persist,’ then discipline them ‘gently’.<sup>2</sup> But if they change their ways, do not be unjust to them. Surely Allah is Most High, All-Great.”

This verse has instructed the husband to beat his wife if the wife is disobedient to her husband and cannot be advised which is clearly contrary to the case of marital rape in the sexual violence crime. But in Islam, the allowance for beating wife to make them aware in order not to be disobedient to her husband. The blow in blow for this case is a light one which will not leave a scar, and break a limb. So in Islam, the husband may beat his insubordinate wife gently, but if the wife obeys, the husbands are not allowed to make them difficult, beat or alienate them.

By the existence of Maqashid Syaria which is essentially a foundation in a legal formation, the authors feel that the instruction to beat is better to be done by the husband, because the recommended shot is only light one which will not hurt, than getting what husband wants but forcing his wife. Because this violation will certainly have a worse impact for both wife's physical psychological.

In Islam, a husband is ordered to have sex with his wife well with the prohibition to do something bad towards his wife, such as good character in interacting with family and society. This is the starting point for husband and wife get their right and favor in their family. So, If it is considered that the wife is under her husband and receives his intervention, threat or other violence, they are the violence which are forbidden in Islam.

The government's responsibility to protect its citizens from discriminatory behavior should be carried out comprehensively by regarding to the wives' right in the family, including their rights to get physical and spiritual support from their husband, self-protection, tribute, good treatment from her husband, fair legal in the case of divorce, child care and legacy, by placing the justice in the highest position as an effort to create good association (*mu'asyarah bil ma'ruf*) within the family for achieving balance between rights and obligations of husband and wife without any intervention between both of them.

### Conclusion

The results of the findings of this study are that the marital rape contained in the law on the crime of sexual violence has clear criminal sanctions, it is contained in Law no. 12 of 2022. The purpose of preparing this regulation is in the category of primary needs in which there is a demand to maintain *Kulliyat Al Khams*. *Maqashid Syariah* as a special discipline that is used in carrying out sharia goals by prioritizing the results of benefit for the community. It is very appropriate that the regulations formulated in the Law on Criminal Acts of Sexual Violence are very much in line with the concept of *Maqasid sharia*.

The crime of sexual violence in the household or marital rape, if examined in depth with an open mind using the *Maqashid Syariah* theory, has violated one of the five main points, namely *Hifzu al-nafs* (life protection).

The long-term goal of establishing the Sexual Violence Crime Law is to prevent further cases of acts of sexual violence occurring in the household, such as marital rape or other matters that have been formulated in the regulation. The sanctions contained in these rules are to create a deterrent effect for perpetrators. The hope for the future is that cases of sexual violence will not be repeated again because there are already clear legal rules.

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