Implementation of Maqāṣid Sharī’ah in Reform of Case Management of Violence against Women and Children

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Abstract:
This study aims to reflect on the values of maqāṣid sharī’ah in management patterns of violence cases against women and children. This is based on arguments about case management which until now has not been able to completely resolve violence against women and children in Indonesia. The presence of maqāṣid sharī’ah in the management pattern of violence against women and children is expected to hold strong legitimacy to formulate a management pattern that is integrated with the basis and values of Islamic law goals. This step is a form of embodiment to resolve violence cases against women and children through maqāṣid sharī’ah-based case management to reflect the resolution of violence cases through integrated steps to realize solutive fiqh for the matter. In an academic purview, this study uses a literature review involving primary and secondary data observed with in-depth analysis. The findings in this study indicate that maqāṣid sharī’ah has implications for the realization of protection for women and children through case management reforms.

Keywords: violence; Islamic law; gender.

Introduction
Violence is prevalent in both developed and developing countries, including Indonesia. Data on recent violence cases indicate that violence cases have increased intensively. To cope with these cases, the government has always commanded the best protection for the interests of victims, even though in reality this problem has not received much attention. This condition is worsened by the differences between institutions that are concerned with the protection of women and children such as the Regional Technical Implementation Unit for Women and Children Protection (henceforth referred to as UPTD PPA in Bahasa), Non-Governmental Organizations (NGOs), as well as law enforcement officials such as the Police, Prosecutors and Courts. The existence of those gaps in the resolution of violence cases against women and children is mainly caused by differences in perceptions...
between service providers and law enforcement officials as well as a lack of understanding of ethics and a sense of sensitivity towards violence cases against women and children.  

In principle, the state has a legal obligation to protect society, including the rights of women and children as victims of violence.  

Ideological constitution and a violence-free state become a common goal both society and the state expect to reach.  

One of the big obstacles that hinder the resolution of violence cases against women and children in Indonesia is the lack of integration between government agencies that handle this type of violence cases, impeding the victims from reporting violence against them due to embarrassment, insufficient evidence, lack of support, lengthy process, and intimidation. This condition certainly requires strategic steps to manage violence cases through an integrated mechanism between the relations of victims, perpetrators, society, and the government.  

Data from the Ministry of Women's Empowerment and Child Protection reported that violence against children, especially related to sexual violence, increased significantly every year.; the data from the Online Information System and Children (PPA Symphony) showed that the number of child abuse cases in 2022 reached 16,106.  

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Child Protection reported there were 11,266 cases of violence against women in 2022.\textsuperscript{10} Those aforementioned data are of course a common concern. Research conducted by Rahmi and Siregar implies that attempts to recover cases of violence against women and children have a positive impact on victims, namely through independent empowerment steps in making decisions to continue showing existence in social life.\textsuperscript{11} Research by Backes, et al. states that the management of domestic violence cases is carried out by providing strong evidence in the form of video recordings. In addition, video-recorded evidence is prepared to formulate a case strategy to further carry out relevant and on-target legal steps.\textsuperscript{12} Chakraborty's research, et al. states that an increase in violence against women and children could be controlled through economic growth, education, and increased integrity of the legal apparatus.\textsuperscript{13}

Those studies confirm that in handling and overcoming violence cases, we need a specific strategy, namely through case management. This attempt is appropriately strategic when Indonesia is still facing and struggling hard to get out of the confines of violence against women and children. Through this foundation, case management is a form of reflection on the construction of empowerment and justice in the discourse of Islamic law studies through the value of \textit{maqāṣid shari'ah}. Therefore, this study is deemed necessary to reaffirm the position of Islamic law (\textit{fiqh}) in providing solutions to societal problems (solutive \textit{fiqh}).\textsuperscript{14} To provide relevant studies, this present study has provided some research questions as follows: 1) What is the pattern of case management of violence against women and children based on \textit{maqāṣid shari'ah}? 2) How is the implementation of management pattern of violence cases against women and children based on \textit{maqashid syari' ah} in solving violence cases in Indonesia? To answer the research questions, this study uses the literary method to collect primary and secondary data on various cases of violence against women and children in Indonesia.\textsuperscript{15} Further investigation was also carried out through studies and literature on \textit{maqāṣid shari'ah} as a basis for analysis.\textsuperscript{16}

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\textsuperscript{14} For the basic concept of solution fiqh, see Jasser Auda, \textit{Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach} (London: the International Institut of Islamic Thought, 2007).
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Through the content analysis method, it is hoped that the findings in this study will be able to provide a direction for the progressive management of violence cases against women and children through the epistemological basis of *maqāṣid sharī‘ah*.

**Maqāṣid sharī‘ah: Attempts to Actualize Equality and Justice**

The acceleration of *maqāṣid sharī‘ah* in contemporary *ijtihād* reflects the elasticity of Islamic law (*fiqh*). This can be seen in the journey of intellectual treasures in the study of Islamic law which notes that there are various legal views on several cases among Muslims. Legal decisions in various cases focus on considerations of goodness and benefit. This foundation is based on the decisions made by the Prophet Muhammad based on considerations of goodness and benefit. In this case, the substantial analysis model of the objectives of Islamic law (*maqāṣid sharī‘ah*) takes the values of *maqāṣid sharī‘ah* into consideration. The discourse on the *maqāṣid sharī‘ah* study appears institutionally mazhabiya under various dynamics of Islamic legal ideas. In the study of *uşul al-fiqh*, it was noted that there was a study on the topic of classifying the embodiment of benefit (*maqāṣid sharī‘ah*). Although in its process, this discourse has gone through some debates and problems related to discussions about the authority to determine Islamic law. Humans have limitations in fulfilling the requirements as a legal subject of *mukallaf* and restrictions in discussing the ability of the mind to find the aims and objectives of establishing Islamic law (*maqāṣid sharī‘ah*).

In this case, the absolute authority of God in establishing Islamic law has a very central position as set out in the text of the Qur’an, although in reality various texts and other histories also explicitly emphasize the existence of some authority possessed by the mujtahid to establish Islamic law. The position of the mujtahid in formulating Islamic law in the contemporary era has very strong authority when it faces the problems and reality of the need for interpretation of religion that holds various orientations and dimensions in contemporary life and society. In other words, the development of society requires religion to display two orientations for its adherents, namely orientation of the temporary world and orientation of the

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hereafter. In this case, when religion has an interaction with the development of civilization in contemporary human reality, it is necessary to have a resistant perspective to show the primordial nature of religion as the eternal law of *hukm al-ilahy* and the demands of religion to show compatible nature with the ever-changing space and time (*ṣāliḥ li kulli zamān wa makān*).\(^{25}\)

As a theological religion, the position of Islamic law is the value of the legal system and teachings that are divine or *ilahiyyah*, transcendent, and absolute. Islamic law has sociological characteristics as the embodiment of cultural phenomena and social reality in human life. In social reality, Islamic law is not only a collection of universal doctrines but also laws that can adapt and participate in social institutions influenced by the situation and dynamics of space and time.\(^{26}\) Therefore the relationship between religion and the phenomenon of modernity over social reality is a medium to reformulate Islamic law to present the values and objectives of Islamic law (*maqāṣid shari’ah*).\(^{27}\) The presence of the *maqāṣid shari’ah* concept in the discourse on Islamic law studies can present Islamic legal products which can accommodate the challenges of the times and respond to various dynamics regarding inequality, injustice, and oppression.\(^{28}\) At a practical level, the concept of *maqāṣid shari’ah* has a strong human element. The concept of the intention behind the creation of human beings and the intention behind *maqāṣid shari’ah* then develops into rationality in *ijtiḥād*.\(^{29}\) The implication of this concept is the expansion of *maqāṣid shari’ah* namely from *maqāṣid al-khams* (the five) to be universal human values. The use of *maqāṣid shari’ah* as a method in the context of legal discussion is developed in accordance with the objectives of Islamic law.\(^{30}\)

The presence of *maqāṣid shari’ah* need not be doubted as it is rooted in the textual injunctions of the Qur'an and Sunnah, but it looks primarily at general philosophy, and the purpose of these injunctions often goes beyond the specifics formulations of its text. The focus is not so much on the words and sentences of the text as on the suggested and upheld purposes and objectives. Compared to the legal theory of its source, namely *uṣūl al-fiqh*, *maqāṣid shari’ah* is not enfolded with methodological techniques and literalist reading of texts. Thereof, *maqashid shari’ah* integrates a level of versatility and understanding into the reading of shari’ah which is in many ways unique and transcends changes in time and circumstances. The existence of important doctrines of *uṣūl al-fiqh* such as general consensus (*ijmāʿ*), analogical reasoning (*qiyyūs*), and even *ijtiḥād* seem to be burdened with difficult conditions, conditions that may not be in harmony with the current socio-political

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29 Ahmad Raisuni, *Nazariyyat Al-Maqashid ‘inda Al-Imam Al-Syathibi*.
climate prevailing in Muslim countries at present time. Meanwhile, *maqashid* has become the focus of attention because it tends to provide wider access. Naturally, *maqāṣid shari’ah* means understanding the outlines of shari’ah purposes which are adequate in providing insight and theoretical framework for various Islamic legal doctrines (*fiqh*).³¹

In the contemporary context, the *maqāṣid shari’ah* development through the principle of *al-khamsah* leads to the interpretation of welfare and empowerment. The embodiment of environmental protection (*hifẓ al-bi’ah*) and human dignity protection (*hifẓ al-‘irz*) is an effort to actualize prosperity and empowerment. In the context of women and children, human dignity protection (*hifẓ al-‘irz*) denotes clear evidence of the seriousness of the *uṣūl al-fiqh* method to protect them. Furthermore, to protect women and children, the *maqāṣid shari’ah* development through *hifẓ al-‘irz* can be implemented.³² The authority of *maqāṣid shari’ah* in the study of Islamic law (*fiqh*) has a strong urgency because there are various *ijtihād* patterns of contemporary jurists (*fuqahā’) in viewing various symptoms and problems of the ummah in this contemporary era. The current products of *ijtihād* place more emphasis on problem-solving based on the embodiment of justice and prosperity compared to legal products which contain aspects of difficulty and discrimination. More than that, *maqāṣid shari’ah* occupies a position as a method and approach in *uṣūl al-fiqh* discourse. This shift in the pattern of *ijtihād* in Islamic law (*fiqh*) seems to emphasize that the authority of Islamic law (*fiqh*) must be built on the basis of the universal value of justice in human life.³³

**Case Management Reform in Solving Social Problems**

Case management is an attempt to manage the process of handling cases systematically which includes assessment, planning, service implementation, monitoring, and evaluation steps. Case management helps people to coordinate across various sectors and levels of government. Case management also has dimensions of client relationships through ongoing service delivery. In addition, case management is also interpreted as a form of service that links assistance from agencies and institutions to psychosocial, medical, and practical service support for every individual who needs service.³⁴ Case management is a step taken by the government to provide service effectiveness. Services in this case are intended to facilitate society to encounter any problems and issues. Through services that have

integration and relationships between local governments and the central government, it is hoped that it will be a solution to the various dynamics and turmoil that exist in society. The collaboration of government relations from the regional to the central level as well as relations with the community is the most important aspect to jointly resolve violence cases against women and children. This foundation is the main step to formulate case management of violence against women and children in Indonesia.\textsuperscript{35} 

Violence case management has undergone many transformations or changes because it aims to provide effective and efficient public services based on the values of the best interests of society. Transformation of public services which implement values and commitments in laws and regulations and supervision aims to realize public services which are integrated into community relations with the aim of obtaining protection from the government.\textsuperscript{36} Case management efforts in the public service transformation system are based on the embodiment of legal certainty which guarantees every community's need through applicable laws in public services and endeavor to provide the best possible service to the community. This is performed to help the community to face any problems and issues.\textsuperscript{37} Violence case management has undergone many transformations or changes because it aims to provide effective and efficient public services based on the values of the best interests of society. Transformation of public services which implement values and commitments in laws and regulations and supervision aims to realize public services which are integrated into community relations with the aim of obtaining protection from the government. Case management efforts in the public service transformation system are based on the embodiment of legal certainty which guarantees every community's need through applicable laws in public services and endeavor to provide the best possible service to the community. This is performed to help the community to face problems and issues. Case management carried out by the government is applied through a variety of resource services that can facilitate every problem existing in the community. In case management planning, the government carries out various forms of socialization and understanding of the people who need assistance. Services that focus on education and counseling forms are closely related to various problems related to matters that physically and non-physically threaten the existence of society. Furthermore, to guarantee the needs of the community, plans carried out by the government are realized through case management with a service process to fulfill every need and demand of the community.\textsuperscript{38} 


\textsuperscript{38} Echa Wahyudi, “Cegah Kekerasan Terhadap Perempuan Dan Anak, DPPPA-KB Pesibar Terapkan Pola Manajemen Kasus,” Kupastuntas.Co, October, 18, 2022,
Especially in the case management of violence against women and children, a pattern of public services that integrates service professionalism and the interests of the victims is the most important step in resolving cases of violence against women and children. Furthermore, violence case management services are implemented through identification processes, assessment processes, preparation of intervention plans, implementation of interventions, case reviews, and evaluations. It is expected that this process will be able to provide integrated control of violence cases against women and children sustainably. Service through mentoring and guidance as well as providing legal certainty to victims is one of the government's case management efforts to provide services in line with previous plans. Therefore, the case management of violence is considered to be an appropriate approach to respond to all the complexities of the problem of protecting women and children. It is expected that through case management, the handling of violence cases and patterns of protection for women and children can be performed effectively, comprehensively, and sustainably. Therefore, the implementation of case management of violence against women and children is also expected to be able to combine efforts in preventing violence cases from all levels. This step is an attempt to embody safety, equality, and justice for women and children as great assets of the state to lead to a dignified and equal life.

In its implementation, the pattern of case management integrates regional and central government. In addition, case management also involves various related institutions and ministries for service effectiveness. However, in its practice, improvements to the reporting system, services, complaints, and accurate reporting data are still needed. Equally important is how complaints of violence cases against women and children can be responded to and handled by various stakeholders who must protect women and children, both from the aspect of law enforcement and victim assistance. Therefore, service centers at every unit and level of government are a breakthrough in transforming the management of violence cases against women and children.

Implementation of Maqāṣid sharī‘ah in Reform of Cases Management of Violence against Women and Children

The problem of violence and exploitation of women and children in today's situation of course becomes a common concern for society, the state, and the world.


The Indonesian government has taken steps to face these problems through the central government to the regional governments to jointly resolve cases of violence and exploitation of women and children. The central and regional governments are formulating case management as a form of the right approach to resolve cases of violence and exploitation of women and children in Indonesia.42

Case management of violence against women and children is intended to serve as the right approach to responding to the complex issues of violence against women and children in Indonesia. The presence of case management of violence and exploitation of women and children brings about integration and unified coordination of protection services for women and children. This is in accordance with Law Number 23 of 2014 concerning Regional Government which states that child protection is not only the authority of the central government alone but also a form of authority of provincial regional governments and district/city regional governments. The implication of this rule is the establishment of UPTD PPA as a service center for victims of violence at the provincial and district/city levels.43

The urgency of UPTD PPA is to carry out operational technical in regional areas to provide services for victims of violence, discrimination, special protection, and other problems. In its services, the UPTD PPA provides services that serve as a form of public complaints, case management, counseling service for the victims, mediation, temporary shelters, and assistance to the victims. The presence of the UPTD PPA is a manifestation of Government Regulation Number 59 of 2019 concerning the Coordination of Child Protection which attempts to carry out cross-sectoral alignment in handling violence cases. The harmonization of the handling of cases of violence is expected to grow harmony between the central government and the regional government to foster a sense of justice and equality for the community.44

The vulnerability of women and children as objects of violence seems unresolved. Various aspects such as legal, economic, and social aspects of society do not support the resolution of this problem, and they still position women and children at the bottom level.45 Therefore, case management efforts to realize the protection of women and children is one of the systematic and strategic steps to construct protection arrangements for the welfare of women and children.46 A new

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concept regarding the case management of violence against women and children is carried out through the "One Stop System" or One Stop Service. This strategy is designed to provide the best service for the victims concerned.  

Case management efforts of violence against women and children are carried out through various stages, namely: First, assessment is the step considered as an effort to identify and understand psychosocial situations to find out the problems they face. Second, planning has the main objective of formulating the development of effective service delivery to the community. This stage is implemented by compiling and developing services as a whole with problem identification patterns obtained from the assessment stage, resulting in a formulation arrangement in problem priorities which are finally used to develop appropriate planning patterns. In terms of case management of violence, planning is carried out in a professional manner to contribute to the handling of the cases on an appropriate and directed basis. Third, implementation (implementation) is performed in order to guarantee the needs of violence victims on the basis of planning. This implementation phase is carried out by providing services needed by victims of violence to ensure that their rights are protected. Fourth, monitoring is performed to supervise the planning and implementation process. This monitoring process is performed by reading the results of reports from each implementation. Fifth, assistance or evaluation of progress in handling these cases is carried out through a success identification pattern.

Case management efforts of violence with the various stages mentioned above are concrete steps to reformulate the appropriate pattern of resolution of violence cases. Furthermore, the complexity of this violence problem needs strategic steps to provide a resolution pattern. More than that, the epistemological basis through a relevant approach is an attempt to integrate management patterns and the right epistemological basis. The integrated management pattern with the basic values of Islamic law (maqāṣid sharī'ah) is an idea of how the management pattern has strategic steps which lead to the realization of benefit for humanity.

The position of maqāṣid sha'ri'ah in case management patterns is implemented in several aspects, including: 1) empowerment and protection of women and children as a manifestation of soul protection (hifẓ al-nafs), 2) recovery of psychosocial trauma for violence victims as a manifestation of protecting the mind (hifẓ al-aql), 3) recovery of the victim's name as a manifestation of the protection of human dignity (hifẓ al-ʻirż). The construction of maqāṣid sha'ri'ah is a strategic step in

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the epistemological foundation of case management patterns. This epistemological foundation is the basic value for realizing various interests in efforts to protect women and children as violence victims. The embodiment of human values and women’s and children’s dignity is a step toward transforming case management. Furthermore, maqāṣid sharī‘ah is a universal value in the study of Islamic law which can be implemented in every social setting,\(^{50}\) in this case, as the basis for transforming the case management of violence.

The strategic steps in managing violence cases against women and children are a form of embodiment of the concept of maqāṣid sharī‘ah. Maqāṣid sharī‘ah is implemented in the values of case management of violence against women and children. This case management has a preventive and curative objective. Preventive measures based on maqāṣid sharī‘ah are implemented through outreach programs from the government and related institutions regarding efforts to prevent violence against women and children. While in the curative aspect, maqāṣid sharī‘ah is implemented in handling violence cases against women and children.

Maqāṣid sharī‘ah in a practical context can be applied in the form of policies based on the benefit aspect. The value of maqāṣid sharī‘ah exists as a basic essence in providing protection and justice for women and children. Furthermore, case management of violence against women and children is applied to the government’s steps and strategies for handling and preventing violence against women and children through a structured method based on maqāṣid sharī‘ah values.

This argument seems to emphasize that maqāṣid sharī‘ah values are the essence of the study of Islamic law which can be used in decision-making and problem-solving in the context of society and the state. The presence of maqāṣid sharī‘ah as the energy of policy becomes an effort to realize the goals of Islamic law. Especially in the humanitarian context, efforts to protect humanitarian interests are undeniable. The priority of justice, equality, and welfare are steps and strategies to implement maqāṣid sharī‘ah in contemporary society.\(^{51}\)

The acceleration of maqāṣid sharī‘ah in contemporary \(^{92}\)ijtihād\(52\) develops as a value approach and social indicator. In the contemporary context, social indicators through maqāṣid sharī‘ah are intended to provide human development through the values of Islamic legal philosophy. This is intended to formulate maqāṣid sharī‘ah as a legal basis in various complex traditions in the contemporary era. This step is understood as a universal form of maqāṣid sharī‘ah which is not only oriented towards individual life, but also community development through strategic steps from the community itself as well as from government institutions.\(^{52}\) The value shift of maqashid sharī‘ah in the study of Islamic law towards social indicators is passed through by a juridical interpretation of the various steps of the mujtahid and the

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government to provide life education to the community. This is important to perceive, considering that Islamic law is the result of interaction between mujtahid and the environment which of course has characteristics. This reality of course becomes a concern in the discourse on Islamic law studies to present social values as a form of product of Islamic legal thought to be further applied as juridical values and social indicators.\(^5\)

The implementation of magāṣid sharī'ah as the case management of violence basis is a form of embodiment of an effective pattern of case management. Case management of violence against women and children is needed to take anticipatory and appropriate handling steps. The implication of the pattern of case management of violence against women and children based on magāṣid sharī'ah is a form of prevention and handling violence cases. Prevention in this case is carried out through advocacy and outreach policies as well as appropriate law enforcement patterns. The concept of magāṣid sharī'ah provides an epistemological basis for the prevention of negative tendencies (dar'u mafaqāsid). This rule indicates that magāṣid sharī'ah is operationally an essential value of Islamic law that can be applied flexibly in solving problems in society.\(^6\) Moreover, it also shows that the elasticity of Islamic law through magāṣid sharī'ah can be applied in the realm of policy-making and implementation on the basis of justice and welfare for the society. Meanwhile, efforts to deal with cases through management transformation are carried out through service patterns with empowerment standards to actualize proper legal enforcement and assistance as well as appropriate social rehabilitation to realize the main principles of magāṣid sharī'ah to create an ideal and just society.

Conclusion

Based on the complexity of the violence problems against women and children, the case management approach is expected to provide the coordination and integration of service patterns needed by victims and their families. This transformation of case management services is intended to create comprehensive, competent, effective, and efficient services which are then applied together as a form of strategy for women and children protection. Moreover, it is intended to guarantee the protection of women and children through accurate and appropriate services. The pattern of case management of violence against women and children based on magāṣid sharī'ah is applied through strategic steps for prevention, protection, and recovery for victims. This pattern is implemented through an integrated management transformation between the central and regional governments. In addition, case management transformation efforts have an emphasis on the pattern of embodiment of magāṣid sharī'ah values as a basis for protection for violence victims. In the Indonesian context, this pattern has an

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urgency in preventing violence against women and children. All these strategic steps through the transformation of violence case management are preventive and serve as a resolution of violence cases through human values in maqāṣid shari‘ah.

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