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## ORIGINAL RESEARCH ARTICLE

# Reconstruction of Husband-Wife Sexual Relations in Shafi'i Jurisprudence from the Perspective of Maqāṣid Al-Usrah and Maṣlaḥah and its Relevance to Article 8 of Law No. 23 of 2004 on the Elimination of Domestic Violence

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## ABSTRACT

This study examines the reconstruction of husband-wife sexual relations in Shafi'i jurisprudence employing the perspectives of maqāṣid al-usrah (family objectives) and maṣlaḥah (public interest), while analyzing its relevance to Article 8 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence. Shafi'i jurisprudence constructs the legitimacy of sexual relations upon the marriage contract (akad), which gives rise to the right of istimtā' and the obligation of tamkīn, circumscribed by the principles of mu'āsharah bi al-ma'rūf, the prohibition of ḍarar, and the recognition of legitimate 'udzur. Through the lens of maqāṣid al-usrah and maṣlaḥah, this study finds that the fundamental objectives of marriage are the realization of sakinah, mawaddah, rahmah, as well as the protection of life, honor, and lineage. Article 8 of the Domestic Violence Law, which prohibits coercive sexual relations within the household, bears substantive relevance to maqāṣid al-usrah as it aims to protect wives from ḍarar that undermines family maṣlaḥah. However, a conceptual tension exists at the epistemological level: Shafi'i jurisprudence proceeds from akad and relational obligations, whereas positive law proceeds from consent and individual protection. This doctrinal legal research recommends a reconstruction of sexual relations grounded in maqāṣid al-usrah that clearly distinguishes between destructive sexual violence and relational conflicts in fulfilling obligations, while offering a proportional and contextual layered protection model.

**Keywords:** Sexual Relations, Shafi'i Jurisprudence, Maqāṣid al-Usrah, Maṣlaḥah, Domestic Violence Law



## ABSTRAK

### Meningkatnya

Penelitian ini mengkaji rekonstruksi relasi seksual suami-istri dalam fikih Syafi'iah menggunakan perspektif maqāṣid al-usrah (tujuan keluarga) dan masalah, serta menganalisis relevansinya terhadap Pasal 8 UU No. 23 Tahun 2004 tentang PKDRT. Fikih Syafi'iah membangun legitimasi relasi seksual di atas akad nikah yang melahirkan hak istimtā' dan kewajiban tamkīn, dengan batasan mu'āsharah bi al-ma'rūf, larangan ḍarar, serta pengakuan 'udzur syar'i. Melalui lensa maqāṣid al-usrah dan masalah, penelitian ini menemukan bahwa tujuan fundamental perkawinan adalah mewujudkan sakinah, mawaddah, rahmah, serta perlindungan jiwa, kehormatan, dan keturunan. Pasal 8 UU PKDRT yang melarang pemaksaan hubungan seksual dalam rumah tangga memiliki relevansi substantif dengan maqāṣid al-usrah karena bertujuan melindungi istri dari ḍarar yang merusak kemaslahatan keluarga. Namun, terjadi ketegangan konseptual pada tataran epistemologis: fikih Syafi'iah bertolak dari akad dan kewajiban relasional, sementara hukum positif bertolak dari consent dan perlindungan individual. Penelitian hukum doktrinal ini merekomendasikan rekonstruksi relasi seksual berbasis maqāṣid al-usrah yang membedakan secara tegas antara kekerasan seksual destruktif dengan konflik pemenuhan kewajiban, serta menawarkan model perlindungan berlapis yang proporsional dan kontekstual.

**Keywords:** Relasi Seksual, Fikih Syafi'iah, Maqāṣid al-Usrah, Masalah, UU PKDRT

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## 1. INTRODUCTION

Sexual relations within marriage are often understood as a private matter best resolved within the household. However, within the Shafi'i jurisprudential tradition, this relationship is not merely a biological concern but rather a legal consequence of the marriage contract (akad) that entails moral and legal responsibilities. Two pivotal concepts in Shafi'i jurisprudence—ḥaqq al-istimtā' (the right to derive sexual pleasure) and tamkīn (the wife's willingness to grant access)—demonstrate that sexual relations are situated within a framework of rights and obligations arising from the contract, rather than being a mere expression of individual autonomy. Al-Ramli, in *Nihāyat al-Muḥtāj*, affirms that marriage in Islamic law (syar'i) constitutes "a contract that encompasses proprietary rights over sexual intercourse (waṭ')" [al-Ramli, *Nihāyat al-Muḥtāj*, vol. 3, p. 215]. This foundational principle is significant because it indicates that the legitimacy of sexual relations in jurisprudence rests upon the institutional structure of marriage, whose maṣlaḥah must be preserved.

The phenomenon of sexual violence within households persists in society despite the existence of regulations prohibiting it. Perpetrators of coerced sexual relations frequently invoke jurisprudential opinions conferring upon husbands comprehensive rights over their wives as

legitimation, claiming such views form part of religious teachings. Field observations indicate that coerced sexual relations produce adverse physical and psychological consequences, along with marital disharmony. On the other hand, conservative circles contend that marital rape is inconceivable given patriarchal cultural norms and religious doctrines emphasizing wifely obedience to husbands. This social reality evinces a gap between the normative understanding of family *maṣlaḥah* held by communities and the legal protections available. *Maqāṣid al-usrah* as a framework of marital objectives offers a resolution to this dichotomy.

Nofitasari's research (2019) demonstrates that classical jurisprudence permitted the coercion of wives into sexual relations as a fulfillment of the husband's sexual rights, while the Domestic Violence Law prohibits such acts under criminal sanction. From the perspective of Jāsir 'Audah's *maqāṣid al-sharī'ah*, this permissibility represents a juristic *ijtihād* open to critique, as a comprehensive reading of the foundational texts (*nuṣūṣ*) concerning sexuality reveals values of *maṣlaḥah*, equality, and justice. Zayadi's study (2022) concludes that marital rape contravenes the Islamic spirit mandating *mu'āsharah bi al-ma'rūf* in husband-wife relations, as well as contradicting the *maqāṣid al-nikāḥ* of *sakinah*. The criminalization of marital rape aligns with *maqāṣid al-sharī'ah* in the form of *hifẓ al-'ird* (protection of honor) and *hifẓ al-naḥs* (protection of life). *Maqāṣid al-usrah*, as a specification of *maqāṣid al-sharī'ah*, provides a more focused framework for the specific objectives of family life.

Apriyanti and Hasanah's research (2025) demonstrates that the discussion of husband-wife rights and obligations in jurisprudence cannot be dissociated from the interpretive framework of Qur'anic verses (*tafsīr al-aḥkām*) and Prophetic traditions (*ḥadīth al-aḥkām*), such that marital relations are understood as normative relationships embodying reciprocal rights [Apriyanti & Hasanah, "Nusyuz of Husband and Wife in the *Maṣlaḥah* Perspective," *Nurani* 25, no. 1 (2025): 18-35]. This research is significant as it begins to address the dimension of *maṣlaḥah* in spousal relations. Mujahid et al. (2026) affirm the existence of a normative gap between classical Shafī'i jurisprudence, which tends toward hierarchical structures, and Indonesian positive law, which has begun to position wives' sexual rights as part of human dignity [Mujahid et al., "Relasi Hak dan Kewajiban Suami Istri," *Jurnal Hukum IUS QUIA IUSTUM* 3, no. 1 (2026): 98-116]. Hidayah and Nasrulloh's research (2025) positions *mubādalah* as a paradigm for reading spousal relations within a framework of partnership and deliberation [Hidayah & Nasrulloh, "Mubadalah Sebagai Paradigma Kesalingan," *Al-Istinbath* 2, no. 2 (2025): 263-274]. However, these studies have not explicitly employed *maqāṣid al-usrah* as their primary analytical framework.

Research on sexual violence within households has developed within the domain of positive law. Zakiah et al. (2023) assert that marital rape constitutes a form of gender oppression born of unequal sexual relations [Zakiah et al., "The Marital Rape Phenomenon," *HUMANISMA* 7, no. 2 (2023): 171-181]. Khumairoh, Ishaq, and Faisol (2024) assess that the regulation of marital rape in Indonesian positive law continues to face normative ambiguity [Khumairoh et al., "Marital Rape as a Crime of Sexual Violence," *International Journal of Law, Crime and Justice* 1, no. 2 (2024): 51-66]. Normala, Sangalang, and Istani (2026) demonstrate that the criminalization of marital rape has not automatically been followed by social acceptance, as community perceptions remain influenced by patriarchal values and religious interpretations [Normala et al., "Legal Awareness of Marital Rape," *Jurnal Ilmu Hukum Tambun Bungai* 10, no. 2 (2026): 655-667]. These studies have

not linked their findings to the *maqāṣid al-usrah* framework capable of bridging the tension between jurisprudence and positive law.

Scholarship on *maqāṣid al-usrah* as a theory within Islamic family law remains relatively limited. Mansour (2025), in his work *Fiqh al-Ussrah fī Daw' Maqāṣid al-Sharī'ah al-Islāmiyyah*, systematically develops the concept of *maqāṣid al-usrah*, encompassing specific family objectives such as realizing *sakinah*, safeguarding honor, protecting lineage, and establishing domestic justice [Mansour, 2025, *فقه الأسرة في ضوء مقاصد الشريعة الإسلامية*, pp. 112-125]. Awaluddin, Moler, and Prasetya (2025), in their research on spousal relations among HIV/AIDS patients, employ the *maqāṣid al-sharī'ah* perspective and emphasize that sexual relations should be directed toward tranquility, compassion, protection of life, and family resilience [Awaluddin et al., "Analisis Hubungan Suami Istri," *MAQASID* 14, no. 3 (2025): 278-289]. This study reinforces the relevance of *maqāṣid* as an evaluative framework for sexual relations.

Studies on the secularization of family law by Hadaiyatullah et al. (2024) indicate that family law reforms in Indonesia, Tunisia, and Turkey signal the need for the recontextualization of family jurisprudence [Hadaiyatullah et al., "Rekontekstualisasi Fikih Keluarga," *Moderasi* 4, no. 2 (2024): 140-163]. Puteh and Kurniawan (2025) demonstrate that family law reforms in Southeast Asia navigate tensions between traditional interpretations and contemporary demands for justice [Puteh & Kurniawan, "Reforming Islamic Family Law in Southeast Asia," *AJISC* 2, no. 1 (2025): 1-25]. Maulana (2026) shows that family law reforms in Indonesia, Turkey, and Tunisia exhibit divergent patterns [Maulana, "Islamic Family Law Reform," *Sakina* 10, no. 1 (2026): 148-166]. These studies are important for mapping changes in the foundational legitimacy of family law, but they have not been directed specifically toward the issue of spousal sexual relations from the perspective of *maqāṣid al-usrah*.

The research gap lies in the absence of a comprehensive study employing *maqāṣid al-usrah* and *maṣlaḥah* as a framework for reconstructing spousal sexual relations within Shafi'i jurisprudence while simultaneously analyzing their relevance to Article 8 of the Domestic Violence Law. The novelty of this research lies in: (1) the integration of *maqāṣid al-usrah* and *maṣlaḥah* as instruments of analysis and reconstruction; (2) an attempt to bridge the tension between Shafi'i jurisprudence and positive law through the framework of marital objectives; (3) the proposal of a layered protection model that clearly distinguishes between destructive sexual violence and relational conflicts in fulfilling obligations; and (4) its relevance to the development of family law in Indonesia that is responsive to *sharī'ah* values and the demands of victim protection.

## 2. RESEARCH FINDINGS

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## The Concept of Maqāṣid al-Usrah and Maṣlaḥah in Spousal Relations

Maqāṣid al-usrah constitutes a specification of maqāṣid al-sharī'ah that focuses on the specific objectives of family formation in Islam. Mansour (2025) formulates five fundamental objectives of maqāṣid al-usrah: (1) realizing *sakinah* (tranquility) as the essence of domestic life; (2) safeguarding the honor and dignity of every family member (*hifẓ al-'ird*); (3) protecting the continuity of legitimate lineage (*hifẓ al-nasl*); (4) establishing justice and balance of rights and obligations within the family; and (5) building an environment that supports the spiritual, moral, and psychological development of family members [Mansour, 2025, *فقه الأسرة*, pp. 118-122]. These five objectives serve as benchmarks for assessing whether a given legal construction of spousal relations—including sexual relations—supports or undermines family *maṣlaḥah*.

*Maṣlaḥah* as a concept in *uṣūl al-fiqh* is defined as the pursuit of benefit and the repulsion of harm. Al-Suyūṭī in *al-Ashbāh wa al-Nazā'ir* affirms the maxim: "جلب المصالح ودرء المفاسد" (securing benefits and repelling harms) [al-Suyūṭī, *al-Ashbāh wa al-Nazā'ir*, p. 85]. In the context of spousal sexual relations, *maṣlaḥah* means that sexual relations must be directed toward the realization of tranquility (*sakinah*), affection (*mawaddah*), and mercy (*rahmah*), and must be free from all forms of harm that damage physical, psychological, or moral well-being. The principle "لا ضرر ولا ضرار" (no harm and no inflicting of harm) serves as the ethical foundation prohibiting all forms of coercion and violence in sexual relations.

Research by Awaluddin, Moler, and Prasetya (2025) on spousal relations among HIV/AIDS patients demonstrates that from a maqāṣid perspective, sexual relations within marriage must be directed toward tranquility, compassion, protection of life, and family resilience [Awaluddin et al., "Analisis Hubungan Suami Istri," *MAQASID* 14, no. 3 (2025): 278-289]. This finding is significant because it shows that maqāṣid speaks not only of the ideal objectives of marriage but can also be applied to special conditions where sexual relations may cause harm. In the case of HIV/AIDS, for instance, maqāṣid demands that the protection of life (*hifẓ al-nafs*) takes precedence over the mere fulfillment of sexual rights. This demonstrates that maqāṣid al-usrah has the capacity to accommodate exceptional circumstances requiring exceptions to sexual obligations.

## The Construction of Sexual Relations in Shafi'i Jurisprudence

In Shafi'i school jurisprudence, spousal sexual relations are not positioned as an independent biological matter but rather as part of the legal consequences of the marriage contract (*akad*). Its foundational structure appears in three pillars: *al-ibāḥah* (the change of status from forbidden to permitted through the contract), *al-istihqāq* (the emergence of rights for the husband and relational obligations for the wife), and *al-mu'āwadah* (the reciprocity between the husband's obligations such as *mahr* and *nafaqah* and the relational rights within marriage). Al-Ramli in *Nihāyat al-Muḥtāj* affirms: "النكاح شرعاً: عقد يتضمن ملك وطء" (Marriage in Islamic law is a contract that encompasses proprietary rights over intercourse) [al-Ramli, *Nihāyat al-Muḥtāj*, vol. 3, p. 215]. This formulation demonstrates that sexual relations are understood as a legal consequence of the contract, rather than an act whose legitimacy must be established from scratch on each occasion.

The husband's sexual rights over his wife are formulated through the concept of *istimtā'*. Al-Haytamī in *Tuḥfat al-Muḥtāj* states: "وله كل تمتع بها حتى بين ليتها وإن لم يولج، لا بمنفذ بول ولا دبر" (The

husband has the right to all forms of enjoyment with his wife, including between her two thighs even without penetration, but not through the urethral or anal orifices) [al-Haytamī, *Tuḥfat al-Muḥtāj*, vol. 7, p. 315]. These rights are reinforced by the prohibition against the wife obstructing legitimate *istimtā'*. Al-Malībārī in *Faṭḥ al-Mu'īn* affirms: "ويحرم عليها منعه من استمتاع جائز" (It is prohibited for the wife to prevent the husband from legitimate *istimtā'*) [al-Malībārī, *Faṭḥ al-Mu'īn*, p. 119]. The wife's obligation is formulated through the concept of *tamkīn*, circumscribed by the existence of legitimate *'udzur* such as illness, menstruation, postpartum bleeding, obligatory fasting, and the state of *iḥrām*.

The wife's sexual rights over her husband are not formulated in language identical to the husband's right of *istimtā'*, but they are nonetheless present. Al-Nawawī in *al-Majmū'* affirms the wife's right to refuse on grounds of legitimate excuse (*'udzur*), while al-Dimyāṭī in *I'ānat al-Ṭālibīn* affirms that the husband must not coerce his wife into anything she cannot bear, nor may he take his rights except with her willing consent (*riḍā*) [al-Dimyāṭī, *I'ānat al-Ṭālibīn*, vol. 3, p. 330]. The principle of *mu'āsharah bi al-ma'rūf* serves as the ethical framework governing the manner in which sexual rights are exercised. Al-Malībārī interprets: "ويجب على الزوجين أن يتعاشرا بالمعروف، بأن يمتنع كل عما يكره" [al-Malībārī, *Faṭḥ al-Mu'īn*, p. 115]. This principle implicitly recognizes the importance of willingness (*riḍā*) in sexual relations.

### **The Construction of Article 8 of Law No. 23 of 2004 on the Elimination of Domestic Violence**

In Indonesian positive law, sexual violence within the household is expressly formulated through Article 8 of Law No. 23 of 2004 on the Elimination of Domestic Violence. The article states: "Sexual violence as referred to in Article 5 letter c includes: a. coercion of sexual relations committed against a person residing within the household; b. coercion of sexual relations against a person within the household with another person for commercial purposes and/or specific objectives" [Law No. 23 of 2004, Article 8]. The text of this article must be read in conjunction with Article 5 letter c, which first establishes sexual violence as a form of domestic violence. The criminal sanctions for violations of Article 8 are stipulated in Article 46 (imprisonment of up to 12 years) and Article 47 (imprisonment of up to 15 years).

The most significant aspect of Article 8 lies in the phrase "coercion of sexual relations." This phrase indicates that the focus of legal attention is no longer placed on the status of the perpetrator as husband or wife, but rather on the manner in which the sexual relation is conducted. The law shifts from the question of whether the relationship occurs within a valid marriage to whether the relationship is conducted through coercion. This logic becomes clearer when Article 8 is read together with Article 10 of the Domestic Violence Law, which grants victims the right to protection, health services, assistance, and spiritual guidance. Reinforcement of this construction is also found in Law No. 12 of 2022 on Sexual Violence Crimes, which in Article 4 paragraph (2) letter d includes "sexual acts contrary to the victim's will" within the regime of sexual violence.

From the perspective of *maqāṣid al-usrah*, Article 8 of the Domestic Violence Law bears strong substantive relevance. The objective of protecting wives from coerced sexual relations that entail *ḍarar* aligns with *hiḍḍ al-nafs* (protection of life), *hiḍḍ al-'ird* (protection of honor), and the realization of *sakinah* within the family. Sexual violence in any form, including marital rape, clearly contravenes the principle of *mu'āsharah bi al-ma'rūf* and the prohibition of *ḍarar* that

constitute the ethical pillars of spousal relations in Islam. However, from an epistemological perspective, a fundamental difference exists: Article 8 is constructed upon the paradigm of consent and individual autonomy, while Shafi'i jurisprudence is constructed upon the paradigm of akad and relational obligations. This difference does not entail absolute contradiction but requires a conceptual bridge provided by *maqāṣid al-usrah*.

### **Relevance and Distortion between Shafi'i Jurisprudence and Article 8 of the Domestic Violence Law**

This research finds that between Shafi'i jurisprudence and Article 8 of the Domestic Violence Law, there exist simultaneously points of relevance and points of distortion. The points of relevance lie in the shared objective of protecting wives from sexual acts that undermine family *maṣlaḥah*. Shafi'i jurisprudence prohibits sexual relations that cause *ḍarar* (harm), as affirmed by al-Haytamī: "أن له الاستمتاع بها كيف شاء من غير ضرر" [al-Haytamī, *Tuḥfat al-Muḥtāj*, vol. 7, p. 318]. Article 8 of the Domestic Violence Law prohibits coerced sexual relations, which clearly constitute a form of *ḍarar*. Thus, substantively, both agree that sexual relations involving violence, threats, or medical harm cannot be justified. *Maqāṣid al-usrah* serves as the framework that reconciles the two: protection of life, honor, and family tranquility constitute shared objectives.

However, this research also identifies points of conceptual distortion. First, the shift in the locus of legitimacy: Shafi'i jurisprudence proceeds from the akad as the foundation giving rise to continuing rights and obligations, while Article 8 proceeds from consent that must be renewed in each interaction. Consequently, a wife's refusal without legitimate *'udzur*—which in jurisprudence is viewed as a breach of obligation—could, within the logic of Article 8, be read as indicating coercion. Second, the transformation of the meaning of coercion: in jurisprudence, coercion is measured by the presence or absence of violation of *ma'rūf*, *ḍarar*, and *'udzur*; in Article 8, coercion tends to be measured by the presence or absence of consent. Third, the transformation of the meaning of protection: jurisprudence constructs protection from within the family structure through internal ethics and boundaries; Article 8 constructs protection through external state intervention.

Research by Khumairoh, Ishaq, and Faisol (2024) on marital rape in Indonesian positive law emphasizes the need for harmonization between the Domestic Violence Law and the Sexual Violence Crimes Law [Khumairoh et al., "Marital Rape as a Crime of Sexual Violence," *IJLCJ* 1, no. 2 (2024): 51-66]. This research agrees with that recommendation but adds that more fundamental harmonization is required between the jurisprudential paradigm and the positive law paradigm. *Maqāṣid al-usrah* offers a framework for such harmonization by shifting the focus of debate from the "akad vs consent" dichotomy toward the shared question: whether a given legal construction supports or impedes the realization of a family that is tranquil, just, and protected. Through this framework, the protection of wives from sexual violence and the recognition of the structure of marital obligations need not be placed in exclusive opposition.

### **A Model for Reconstructing Sexual Relations Based on Maqāṣid al-Usrah and Maṣlaḥah**

Based on the above findings, this research offers a model for reconstructing spousal sexual relations grounded in *maqāṣid al-usrah* and *maṣlaḥah*. This model is built upon three main pillars.

The first pillar is the recognition of the marriage contract (*akad*) as the foundation for the legitimacy of sexual relations, with the affirmation that the contract must be read within the framework of its fundamental objectives (*sakinah*, *mawaddah*, *rahmah*, *hifẓ al-nafs*, *hifẓ al-'ird*, *hifẓ al-nasl*). The second pillar is the affirmation that sexual rights arising from the contract are not absolute but are always limited by the principle of *ma'rūf*, the prohibition of *ḍarar*, and the recognition of *'udzur*. The third pillar is the strengthening of internal family mechanisms (advice, mediation, counseling) as the first step in conflict resolution, before state intervention through criminal channels.

The layered protection model offered consists of four layers. Layer one: awareness that sexual relations are a consequence of the *akad*, such that in the absence of legitimate *'udzur*, the wife has a responsive obligation. Layer two: recognition that this responsive obligation cannot be enforced in a manner that wounds, degrades, or causes harm. Layer three: when violations of layer two occur (violence, serious threats, medical harm), state intervention is required. Layer four: when rights-obligations conflicts not involving violence arise, resolution should be returned to internal family mechanisms before entering the criminal sphere. This model aligns with *maqāṣid al-usrah* by maintaining the balance between individual protection and the sustainability of the family institution.

## 4. DISCUSSION

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### **Maqāṣid al-Usrah as a Framework for Epistemological Reconciliation**

*Maqāṣid al-usrah* offers a framework for bridging the epistemological tension between *Shafi'i* jurisprudence and positive law. Ibn 'Ashur in *Treatise on Maqasid al-Shariah* affirms that the primary objective of Islamic law is the balanced realization of the *maṣlaḥah* of individuals and communities, not merely at the formal level of law [Ibn 'Ashur, *Treatise on Maqasid al-Shariah*, IIIT, 2006, pp. 52-55]. In the context of the family, *maqāṣid al-usrah* directs attention toward the realization of *sakinah*, justice, and the protection of life, honor, and lineage. Mansour (2025) further develops this by asserting that *maqāṣid al-usrah* must constitute the foundation of every *ijtihād* in family law, including in matters of sexual relations [Mansour, 2025, *فقه الأسرة*, pp. 125-130].

Zayadi's research (2022) on the criminalization of marital rape from the perspective of *maqāṣid al-sharī'ah* demonstrates that the prohibition of coerced sexual relations embodies the mission of protecting *hifẓ al-nafs*, *hifẓ al-nasl*, and *hifẓ al-'ird*. This research reinforces the argument that *maqāṣid*—both in its general form (*al-sharī'ah*) and its specific form (*al-usrah*)—provides legitimacy for efforts to protect victims of sexual violence. However, unlike approaches that merely adopt consent in absolute terms, the *maqāṣid al-usrah* approach also demands protection of the institution of marriage as a means of achieving the greater *maṣlaḥah*. Therefore, approaches that emphasize only individual protection without regard for the sustainability of the marital institution are not entirely aligned with *maqāṣid*.

Research by Hadaiyatullah et al. (2024) on the recontextualization of family jurisprudence in the modern era demonstrates that family law reform is unavoidable but must be undertaken while preserving the fundamental values of *sharī'ah* [Hadaiyatullah et al., "Rekontekstualisasi Fikih Keluarga," *Moderasi* 4, no. 2 (2024): 140-163]. *Maqāṣid al-usrah* provides a framework for recontextualization that allows classical jurisprudence to be reread without losing its identity as Islamic law. In the context of sexual relations, recontextualization means that principles such as *ma'rūf*, *ḍarar*, and *'udzur* must be interpreted contextually, taking into account developments in medical knowledge regarding reproductive health, awareness of psychological trauma, and contemporary demands for gender justice.

This research argues that *maqāṣid al-usrah* is not merely a decorative theory but has operational functions in evaluating legal constructions. The first function is as an instrument of critique: a legal construction—whether jurisprudential or positive—can be criticized if it is proven to impede the realization of *sakinah* or perpetuate *ḍarar*. The second function is as an instrument of reconstruction: a legal construction can be reconstructed if a more effective means of achieving *maqāṣid* is found. The third function is as a bridge for harmonization: when two legal systems (jurisprudence and positive law) conflict, *maqāṣid al-usrah* provides a common language for finding common ground. Through these three functions, *maqāṣid al-usrah* constitutes a solid foundation for the reconstruction of sexual relations proposed by this research.

### **The Relevance of Article 8 of the Domestic Violence Law to *Maqāṣid al-Ussrah***

Article 8 of the Domestic Violence Law, which prohibits coerced sexual relations within the household, bears strong relevance to *maqāṣid al-usrah*. First, from the aspect of *hiḍḍ al-naḥs* (protection of life), coerced sexual relations can cause severe psychological trauma, depression, and even suicidal ideation in victims. Second, from the aspect of *hiḍḍ al-'ird* (protection of honor), coerced sexual relations degrade the wife's dignity as a human being possessing rights over her own body and will. Third, from the aspect of realizing *sakinah*, a household in which sexual coercion occurs cannot achieve the tranquility that constitutes the primary objective of marriage. Thus, substantively, the prohibition in Article 8 aligns with *maqāṣid al-usrah*.

Nofitasari's research (2019) demonstrates that from the perspective of *Jāsir 'Audah's maqāṣid*, the permissibility of coerced sexual relations in classical jurisprudence represents an *ijtihād* open to critique, as it contradicts the values of *maṣlaḥah*, equality, and justice contained in the foundational texts in their entirety. This research reinforces the argument that *maqāṣid* can function as an internal critique of classical jurisprudence itself. In other words, not all classical jurisprudential opinions are automatically aligned with *maqāṣid*; there are instances where such opinions require revision because they contradict the fundamental objectives of *sharī'ah*. In this regard, opinions that permit a husband to coerce his wife into sexual relations—if they indeed exist—require review because they clearly contradict *maqāṣid al-usrah*.

However, the relevance of Article 8 to *maqāṣid al-usrah* does not mean that Article 8 can be adopted wholesale without adjustment. Research by Normala, Sangalang, and Istani (2026) demonstrates that the criminalization of marital rape has not automatically been followed by social acceptance because community perceptions remain heavily influenced by patriarchal values and religious interpretations that reject women's bodily autonomy within marriage. This indicates that

the effectiveness of Article 8 depends greatly on how it is socialized and internalized by Muslim communities. Maqāṣid al-usrah can play a role in this socialization by demonstrating that protection of wives from sexual violence is not a foreign or Western-imported value but rather an integral part of the objectives of sharī'ah.

Research by Tumengkol, Runtunuwu, and Rawung (2025) on the juridical review of marital rape under Indonesian positive law demonstrates that the implementation of Article 8 continues to face various challenges, including a lack of understanding among law enforcement officials regarding the complexity of marital relations [Tumengkol et al., "Tinjauan Yuridis Perkosaan dalam Perkawinan," *Khatulistiwa* 5, no. 4 (2025): 160-177]. This research recommends the need for training of law enforcement officials on the dynamics of spousal relations from the perspective of Islamic law. This recommendation aligns with the maqāṣid al-usrah approach, which emphasizes the importance of context and objectives in assessing an act, rather than merely the presence or absence of formal consent.

### **Maṣlaḥah as a Parameter for Distinguishing Types of Conflict**

The concept of maṣlaḥah in uṣūl al-fiqh offers a parameter for clearly distinguishing between destructive sexual violence and conflicts over the fulfillment of obligations. Al-Suyūṭī in *al-Ashbāh wa al-Naẓā'ir* affirms the maxim: "تصرف الإمام على الرعية منوط بالمصلحة" (The ruler's policy toward the subjects is contingent on maṣlaḥah) [al-Suyūṭī, *al-Ashbāh wa al-Naẓā'ir*, p. 87]. In this context, the state as ruler has the authority to intervene in family relations if it is proven that a greater maṣlaḥah requires protection. Sexual violence that causes physical injury, psychological damage, or threatens life clearly falls within the category requiring state intervention because the ḍarar it causes is severe (ḍarar fāḥish).

Conversely, conflicts over the fulfillment of sexual obligations not involving violence—for example, a wife refusing her husband's advances due to fatigue or being uninterested, while the husband insists but without violence or threats—falls within a category where the level of ḍarar is lower. In such cases, maṣlaḥah actually demands internal resolution through communication, advice, or family mediation, rather than through criminal channels. The maxim "درء المفاسد مقدم على جلب المصالح" (Preventing harm takes precedence over securing benefits) [al-Suyūṭī, *al-Ashbāh wa al-Naẓā'ir*, p. 88] demonstrates that prevention of ḍarar is a priority. However, in the context of non-violent conflict, bringing the matter to criminal court may itself cause new ḍarar (family breakdown, stigmatization, psychological burden) that may be greater than the initial ḍarar.

Research by Puspita and Umami (2024) on the impact of domestic violence and marital rape demonstrates that marital rape not only harms victims physically and psychologically but also disrupts the integrity of the family itself [Puspita & Umami, "Dampak Kekerasan dalam Rumah Tangga," *Syakhshiyah* 4, no. 1 (2024): 45-60]. This research fully agrees that actual acts of sexual violence must receive legal sanction. However, a distinction must be drawn between marital rape in its true sense (involving physical violence, weapons threats, or serious medical harm) and mere "sexual pressure" unaccompanied by violence. Conflating the two within a single legal category risks causing injustice and societal resistance.

This research proposes the use of a *ḍarar* scale to differentiate levels of conflict severity. *Ḍarar* scale level 1: no *ḍarar* (refusal communicated well, resolved through deliberation). Level 2: mild *ḍarar* (refusal without communication, tension, but no violence)—resolved through advice and mediation. Level 3: moderate *ḍarar* (persistent pressure, psychological pressure, but no physical violence)—requires professional counseling. Level 4: severe *ḍarar* (physical violence, threats, medical harm)—state intervention required. Using this scale, Article 8 of the Domestic Violence Law is appropriately applied to *ḍarar* scale level 4, while levels 1-3 are resolved through non-penal mechanisms more aligned with *maqāṣid al-usrah*.

### **Critique of the Absolutization of Consent within the Maqāṣid Framework**

This research critiques the absolutization of consent as the sole measure of the legitimacy of sexual relations within marriage, but this critique is situated within the *maqāṣid* framework, not within a framework of defending violence. Research by Zakiah et al. (2023) on marital rape as a form of gender oppression demonstrates the importance of consent in protecting women from sexual exploitation within marriage [Zakiah et al., "The Marital Rape Phenomenon," *HUMANISMA* 7, no. 2 (2023): 171-181]. This research agrees that consent is an important value that must be protected. However, *maqāṣid al-usrah* teaches that consent within marriage has characteristics different from consent in relationships outside marriage, given the existence of a contract that has provided initial consent to sexual relations in general.

Research by Lazuardi et al. (2022) in a comparative study of sexual violence law reform demonstrates that modern states tend to adopt a victim-centered approach with consent as the primary parameter [Lazuardi et al., "Sexual Assault: Law Reform in Comparative Perspective," *Jurnal Penelitian Hukum De Jure* 7, no. 5 (2022): 209-227]. This approach has advantages in protecting victims from various forms of coercion. However, this research argues that this approach requires modification when applied to the marital context, taking into account the existence of the *akad* and reciprocal obligations. This modification does not mean weakening protection for victims but rather strengthening it by making the law more contextual and proportionate.

Prawira's research (2024) on the potential for overcriminalization warns that the expansion of criminal law without clear boundaries can create new problems in the legal system [Prawira, "Potensi Overkriminalisasi pada Pengaturan Tindak Pidana Kohabitasi," *Statuta* 4, no. 1 (2024): 31-49]. Overcriminalization can cause overload of the criminal justice system, stigmatization of perpetrators who are not actually dangerous, and diversion of resources from the handling of serious crimes. In the context of marital sexual relations, overcriminalization risks transforming every domestic tension into a criminal case, which ultimately undermines the family institution that it seeks to protect. *Maqāṣid al-usrah* teaches that protection of the family must be carried out proportionally, not in a manner that actually destroys the family itself.

This research proposes the concept of "willingness within the framework of obligation" (*riḍā fī iltizām al-zawjī*) as an alternative to absolute consent. This concept acknowledges that within marriage, there exist obligations that have been agreed upon through the *akad*, including the obligation to be responsive in sexual relations in the absence of 'udzur. However, this obligation cannot be enforced in a manner that wounds, degrades, or endangers. Willingness (*riḍā*) remains

an important value, but it is situated within the context of the akad and mutual responsibility. Through this concept, protection of wives from sexual violence is maintained, but without eliminating the normative structure of marriage recognized in jurisprudence. Maqāṣid al-usrah provides the theoretical foundation for this concept because it balances individual protection with institutional sustainability.

### **Reconstruction of Shafi'i Jurisprudence Based on Maqāṣid al-Usrah**

The reconstruction of Shafi'i jurisprudence based on maqāṣid al-usrah begins by rereading jurisprudential texts on sexual relations with the question: does literal understanding of these texts support or impede the realization of *sakinah*, justice, and protection of life and honor? Research by Hidayah and Nasrulloh (2025) on *mubādalah* as a paradigm of reciprocity in spousal relations demonstrates that rereading jurisprudential texts can produce more egalitarian and just understandings [Hidayah & Nasrulloh, "Mubadalah Sebagai Paradigma Kesalingan," *Al-Istinbath* 2, no. 2 (2025): 263-274]. This research aligns with the spirit of that reconstruction but adds the maqāṣid al-usrah framework as a more systematic foundation.

The proposed reconstruction encompasses several points. First, the husband's right of *istimtā'* must be read within the framework of the husband's obligation to act with *ma'rūf* and not cause *ḍarar*. This means that this right cannot be exercised in a manner that is harsh, degrading, or that disregards the wife's physical and psychological condition. Second, the wife's obligation of *tamkīn* must be read within the framework of the wife's right to kind treatment and protection from harm. This means that the obligation of *tamkīn* lapses if there is legitimate *'udzur*, including psychological *'udzur* such as trauma or mental unreadiness. Third, the concept of *'udzur* needs to be expanded beyond physical conditions (illness, menstruation, postpartum bleeding) to include verifiable psychological conditions.

Research by Apriyanti and Hasanah (2025) on *nusyūz* of husband and wife from the perspective of *maṣlaḥah* demonstrates that the concept of *nusyūz* in jurisprudence applies not only to wives but also to husbands [Apriyanti & Hasanah, "Nusyuz of Husband and Wife," *Nurani* 25, no. 1 (2025): 18-35]. A husband who fails to fulfill his obligation of maintenance (*nafaqah*) or who physically or psychologically harms his wife can be categorized as committing *nusyūz*. This demonstrates that jurisprudence actually possesses a balanced framework, only that in practice gender bias often occurs in interpretation and application. Reconstruction based on maqāṣid al-usrah aims to restore this balance by making *maṣlaḥah* and protection of honor and life the primary priorities.

Research by Nelli and Yuliana (2022) on a wife's *nusyūz* not invalidating maintenance according to Ibn Hazm and its relevance to Indonesian family law demonstrates that jurisprudence has internal mechanisms sufficiently sophisticated for handling domestic conflicts [Nelli & Yuliana, "Nusyuz Isteri Tidak Menggugurkan Nafkah," *Al-Fikra* 21, no. 2 (2022): 155-169]. These mechanisms include advice, separation, and family mediation, before proceeding to divorce or criminal channels. Reconstruction based on maqāṣid al-usrah actually strengthens these internal mechanisms by making them mandatory steps before criminal intervention. This aligns with the principle "التدراك بالمعروف قبل التدّاخل بالعقوبة" (correcting through good means before intervening with punishment).

## **Implications for the Harmonization of Family Law in Indonesia**

The findings of this research have important implications for efforts to harmonize family law in Indonesia. Maulana's research (2026) on family law reform in Indonesia, Turkey, and Tunisia demonstrates that no single model fits all countries [Maulana, "Islamic Family Law Reform in Indonesia, Türkiye, and Tunisia," *Sakina* 10, no. 1 (2026): 148-166]. Indonesia, with the world's largest Muslim population and a pluralistic legal system (encompassing customary law, Islamic law, and Western law), requires a distinctive approach. A gradual-dialectical approach that brings together the tradition of jurisprudence with modern demands through collective *ijtihad* and participatory legislation appears most suited to the Indonesian context.

Research by Hutagalung and Gloriawati (2024) on the political concept of family law legislation in Indonesia demonstrates that modern family law does not emerge solely from jurisprudential doctrine but from a state legislative process integrating legal, political, and social considerations [Hutagalung & Gloriawati, "Konsep Politik Legislasi Hukum Keluarga," *Jurnal Kajian Ilmiah* 23, no. 1 (2024): 1-12]. This process carries consequences for the transformation of perspectives on spousal relations, including sexual relations. However, this research argues that this transformation of perspective need not mean a complete break with the tradition of jurisprudence. *Maqāṣid al-usrah* can serve as a bridge enabling positive law to accommodate jurisprudential values without losing modern protective rationality.

Research by Puteh and Kurniawan (2025) on family law reform in Southeast Asia reveals that the state, religious authorities, and civil society together constitute important actors in family law reform [Puteh & Kurniawan, "Reforming Islamic Family Law in Southeast Asia," *AJISC* 2, no. 1 (2025): 1-25]. In Indonesia, the Domestic Violence Law and the Sexual Violence Crimes Law are products of a lengthy socio-political process, involving the struggle of women's groups and human rights advocacy. However, this process also leaves tensions with Muslim communities that continue to adhere to classical jurisprudential understandings of marriage. This research recommends that in future harmonization, *maqāṣid al-usrah* be adopted as a common language between legislators, judges, religious scholars ('*ulamā'*), and Muslim communities.

Research by Swandewi (2025) on the reformulation of the regulation of marital rape from the perspective of feminist legal theory emphasizes the importance of strengthening the concept of consent in positive law [Swandewi, "Reformulasi Pengaturan Tindak Pidana Perkosaan," Thesis UNNES, 2025, pp. 85-92]. This research appreciates the contribution of feminist legal theory in promoting victim protection but argues that the adoption of consent in absolute terms without contextualization risks causing resistance. The *maqāṣid al-usrah* approach offers a middle path: consent is recognized as an important value but is situated within the framework of the *akad* and mutual responsibility. Through this approach, victim protection and recognition of the structure of marriage can proceed in tandem.

## **Future Directions for Legal Policy**

Based on the above analysis, this research recommends several directions for future legal policy. First, the development of interpretive guidelines for Article 8 of the Domestic Violence Law grounded in *maqāṣid al-usrah*. Such guidelines would assist judges, prosecutors, and police in

distinguishing between cases of sexual violence requiring criminal intervention and cases of conflict over fulfillment of obligations more appropriately resolved through non-penal mechanisms. Such guidelines would also prevent overcriminalization and ensure that the law is applied proportionally.

Second, the strengthening of mediation and family counseling mechanisms as alternative conflict resolution before entering the criminal sphere. Subaidi's research (2014) on the concept of maintenance under Islamic marriage law reminds that rights and obligations in marriage are reciprocal and that conflict resolution should begin within the family [Subaidi, "Konsep Nafkah Menurut Hukum Perkawinan Islam," *ISTIDAL* 1, no. 2 (2014): 112-125]. Mediation mechanisms involving professional counselors who understand family jurisprudence and marital psychology can provide a better solution than immediately bringing cases to criminal court.

Third, massive socialization of *maqāṣid al-usrah* to Indonesian Muslim communities. Research by Normala, Sangalang, and Istani (2026) demonstrates that resistance to the criminalization of marital rape stems largely from a lack of understanding that protection of wives from sexual violence aligns with Islamic teachings [Normala et al., "Legal Awareness of Marital Rape," *JHTB* 10, no. 2 (2026): 655-667]. Socialization through religious study circles (*majelis taklim*), Islamic boarding schools (*pesantren*), and mass media can transform societal perceptions that the Domestic Violence Law is not a threat to Islamic values but rather an implementation of *maqāṣid al-usrah*.

Fourth, the need for further study on the development of *fiqh al-usrah al-mu'āṣir* (contemporary family jurisprudence) grounded in *maqāṣid*. Mansour's research (2025) has initiated this effort, but further elaboration is needed on specific issues such as sexual relations, domestic violence, and the balance of rights and obligations [Mansour, 2025, *فقه الأسرة*, pp. 200-215]. The development of contemporary family jurisprudence is important so that jurisprudence remains relevant to contemporary developments without losing its identity as Islamic law. *Maqāṣid al-usrah* and *maṣlaḥah* must constitute the primary foundations of such development.

## 5. CONCLUSION

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This research concludes that the reconstruction of spousal sexual relations in Shafi'i jurisprudence from the perspective of *maqāṣid al-usrah* and *maṣlaḥah* yields a more proportionate and contextual model. *Maqāṣid al-usrah* as a framework of fundamental objectives of marriage—realizing *sakinah*, safeguarding honor, protecting life and lineage, and establishing domestic justice—provides a robust evaluative foundation for assessing both classical jurisprudential constructions and positive law. Article 8 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence, which prohibits coerced sexual relations within the household, bears strong substantive relevance to *maqāṣid al-usrah* as it aims to protect wives from *ḍarar* that undermines family *maṣlaḥah*. However, at the epistemological level, a fundamental difference exists between Shafi'i jurisprudence, which proceeds from *akad* and relational obligations, and positive law, which proceeds from consent and individual protection. This difference does not entail absolute contradiction but requires a conceptual bridge provided by *maqāṣid al-usrah*.

This research recommends a layered protection model that clearly distinguishes between destructive sexual violence (severe *ḍarar* scale) requiring state intervention and non-violent conflicts over the fulfillment of obligations (mild-moderate *ḍarar* scale) more appropriately resolved through internal family mechanisms (advice, mediation, counseling). This model rejects the absolutization of consent without neglecting victim protection, and rejects literal defense of classical jurisprudence that could potentially legitimize violence. Through the *maqāṣid al-usrah* approach, protection of wives from sexual violence and recognition of the normative structure of marriage can proceed in harmonious tandem. This research contributes to the development of Islamic family law in Indonesia that is responsive to modern demands for justice while remaining grounded in *sharī'ah* values.

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