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Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

Implementation of the Principle of Hifdzun Nafs in Protecting Women and Children from Domestic Violence: A Contemporary Islamic Law Perspective

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Abstract. *Domestic violence (DV) against women and children remains a serious problem in Indonesia, even though Law Number 23 of 2004 concerning the Elimination of Domestic Violence has been in effect for more than two decades. This regulation is normatively oriented towards the physical and psychological protection of victims, but its implementation is often not reinforced by a value base rooted in family awareness, especially the religious values held by the majority of society. This paper aims to analyze the relevance of the principle of Hifdzun Nafs (protecting the soul) in the maqashid Sharia as an ethical-normative framework that can strengthen legal protection for women and children victims of domestic violence. The study uses a juridical-normative method with a conceptual and comparative approach, examining the relationship between the principle of Hifdzun Nafs with the provisions of the Domestic Violence Law and the Child Protection Law. The results of the study indicate that the principle of Hifdzun Nafs has a substantive meeting point with the spirit of protection in positive law, but there are gaps in implementation, especially in the family-based preventive approach. This paper recommends the integration of Hifdzun Nafs values into family literacy programs and strengthening the role of religious institutions as partners of the legal system in preventing domestic violence.*

Keywords: *Domestic Violence; Hifdzun Nafs; Maqashid Syariah; Protection of Women and Children.*

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1. Introduction

The family is the smallest social unit and should ideally be the safest place for all its members, especially women and children. However, reality shows that households are often the sites of violence.

The 2025 Annual Report (CATAHU) of the National Commission on Violence Against Women noted that the number of complaints of Gender-Based Violence against Women (KBGtP) received by the National Commission on Violence Against Women (Komnas Perempuan) increased by 10% with a total of 4,597 cases, while overall KBGtP data collected from 97 data provider institutions increased by 14.07% with a total of 376,529 cases.¹In the personal sphere, violence against wives (KTI) was recorded as the most dominant form with 661 cases, with psychological violence being the most common form experienced (1,092 cases).². Even more concerning, there were eight cases of femicide reported throughout 2025, with the majority of perpetrators being close relatives and/or family members. This suggests that femicide is often the culmination of repeated domestic violence that is not adequately addressed.³.

Children face similar challenges. The 2024 Indonesian Child Protection Commission (KPAI) Annual Report noted that of the 2,057 complaints received, issues related to family environment and parenting accounted for the most cases, with 1,097 complaints, followed by children who were victims of physical and psychological violence, with 240 cases.⁴Significantly for the context of domestic violence, KPAI data shows that most perpetrators of violence against children come from the immediate family circle, namely biological fathers (259 cases reported) and violence by biological mothers (173 cases recorded). This demonstrates the fact that the home, rather than being a safe space, is actually the main source of threat for children.⁵.

¹National Commission on Violence Against Women, 2025 Annual Report Fact Sheet (CATAHU): Strengthening Data, Addressing Vulnerability, Urging the State to Take Action for Victims' Justice, National Commission on Violence Against Women, Jakarta, 2026, Page 1

²National Commission on Violence Against Women, Annual Report Fact Sheet (CATAHU) 2025, Op.Cit., p.3.

³National Commission on Violence Against Women, Annual Report Fact Sheet (CATAHU) 2025, Op.Cit., p.5.

⁴<https://www.kpai.go.id/publikasi/laporan-tahunan-kpai-jalan-terjal-perlindungan-anak-ancaman-serius-generasi-emas-indonesia>.accessed July 8, 2026.

⁵<https://www.kpai.go.id/publikasi/laporan-tahunan-kpai-jalan-terjal-perlindungan-anak-ancaman-serius-generasi-emas-indonesia>.accessed July 8, 2026

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The Indonesian Child Protection Commission (KPAI) also recorded cases of filicide (the murder of a child by a parent) and familicide (the murder of a family member by a father) as the most extreme forms of domestic violence. The 2024 National Survey of Life Experiences of Children and Adolescents (SNPHAR) even showed that one in two children aged 13-17 had experienced at least one form of violence in their lifetime.⁶ The data confirms that this problem is not limited to girls alone, but rather affects all children as a vulnerable group within an unequal power structure.

These data show that the existence of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PDKRT Law)⁷ and Law No. 35 of 2014 concerning Child Protection⁸, despite having been in effect for years, has not been fully effective in reducing the incidence of domestic violence. CATAHU 2025 also noted that lawsuit divorce, filed by the wife, is often the victim's exit strategy to escape the cycle of domestic violence, with the number of lawsuit divorce cases reaching 346,554, far higher than the 91,672 cases of divorce. This phenomenon indicates that divorce, rather than providing healing and protection within the household, is actually the way out more often taken by adult victims. Meanwhile, children in the same household generally do not have a similar exit strategy and are entirely dependent on the existing protection system.

Thus, the issue of domestic violence cannot be viewed solely as a legal issue, but also as a moral and spiritual issue closely related to society's perspective on power relations within the family. In the context of Indonesia, where the majority of the population is Muslim, a purely legal approach often fails to adequately address the root of the problem, as legal norms operate independently of religious awareness, which serves as society's primary moral guideline for living within a household. This is where the importance of reintroducing Islamic values, particularly the Maqasid Syariah principle, emerges as an ethical framework that can strengthen existing regulations. One of the core principles of Maqasid Syariah is Hifdzun Nafs (protecting the Soul), which places the protection of human physical and psychological safety as one of the primary goals of sharia.

⁶<https://www.kpai.go.id/publikasi/laporan-tahunan-kpai-jalan-terjal-perlindungan-anak-ancaman-serius-generasi-emas-indonesia>, accessed July 8, 2026.

⁷Republic of Indonesia, Law Number 23 of 2004 concerning the Elimination of Domestic Violence, State Gazette of the Republic of Indonesia 2004 No. 95.

⁸Republic of Indonesia, Law Number 35 of 2004 concerning the Elimination of Domestic Violence, State Gazette of the Republic of Indonesia 2004 No. 95.

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The problem is that the integration of Hifdzun Nafs values into domestic violence practices in Indonesia has not been systematically studied, especially within a contemporary Islamic legal framework relevant to the national regulatory context. Previous studies generally discuss domestic violence solely from a positive legal perspective, or discuss Maqasid Syariah theoretically without directly linking it to applicable legal protection mechanisms. This gap underlies the need for this study.

2. Research Methods

This research uses a juridical-normative method, namely legal research that examines law as written norms (Law in books) by examining the principles, concepts, and legal doctrines relevant to the content discussed. This method was chosen because this research is not intended to test the effectiveness of law enforcement in the field (law in action), but rather to analyze the conceptual harmony between Islamic legal norms (Maqhasid Syariah, especially the principle of Hifdzun Nafs) with positive Indonesian legal norms related to the protection of women and children from domestic violence.

The approach used in this research is:

1. Conceptual Approach

Used to examine the concept of Hifdzun Nafs in Maqashid Syariah, especially as explained by Yusuf Al-Qaradhawi⁹ in his discussion of the rights and protection of family members, then linking it to the concept of human rights protection in positive law

2. Statute Approach

Used to examine the provisions in Law No. 23 of 2004 concerning Domestic Violence and Law No. 35 of 2014 concerning Child Protection which are relevant to the principle of protecting human life and dignity.

3. Comparative Approach

Used to compare the meeting points and gaps between the values of Hifdzun Nafs and positive legal norms.

The data sources in this study consist of:

⁹Yusuf Qardhawi, Contemporary Fatwas, Volume I, ISNET. p. 30.

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1. Primary legal material: Law No. 23 of 2004 concerning Domestic Violence¹⁰. Law No. 35 of 2014 concerning Child Protection¹¹; Verses of the Quran (Qs. An-Nisa; 19,34 and Qs Ar-Rum: 21); Hadiths of the Prophet Muhammad SAW regarding the prohibition of violence against wives and children; and the thoughts of Yusuf Al-Qardhawi as contained in the book *Al Halal wal Haram fil Islam*¹² and Contemporary Fatwas¹³, especially the discussion about the wife's rights over her husband.

2. Secondary legal materials: books, scientific journals, and previous research results related to Maqashid Syariah, Hifdzun Nafs, and domestic violence.

3. Tertiary legal materials: supporting statistical data from the 2025 National Commission on Violence Against Women Annual Report (CATAHU) and the 2024 KPAI Annual Report, used as an empirical context to strengthen the urgency of the research.¹⁴.

Data collection techniques were conducted through library research, reviewing legal documents, Islamic literature, and relevant institutional reports. Data analysis techniques employed qualitative analysis methods with a descriptive-analytical approach, namely presenting the data and norms found, then analyzing them to identify the relevance and gaps between the Hifdzun Nafs principle and regulations for the protection of women and children applicable in Indonesia.

3. Results and Discussion

3.1. The Concept of Hifdzun Nafs in Maqashid Syariah and Its Relevance to Family Protection

Hifdzun Nafs (protecting the soul) is one of the five main principles (*al-kulliyat al-khams*) in Maqashid Syariah. Besides protecting religion, reason, descendants, and property, this principle places human physical and psychological safety as the highest goal that must be protected by sharia, including in household relationships. Yusuf Al-Qaradawi, in his discussion of a wife's rights over her husband, emphasized that a husband's obligations are not limited to

¹⁰Republic of Indonesia, Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Op.Cit

¹¹Republic of Indonesia, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Op.Cit.

¹²Yusuf Qardawi, *Halal and Haram in Islam*, translated by Mu'amal Hamidy, PT. Bina Ilmu, Surabaya, 1993. Chapter 3 "Gharizah, Marriage and Family", page 200.

¹³Yusuf Qardhawi, *Contemporary Fatwas*, Volume 1. Page 28. Op.Cit

¹⁴National Commission on Violence Against Women, Op. Cit.; Indonesian Child Protection Commission, Op. Cit

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fulfilling material needs (sustenance, clothing, shelter) but also psychological needs in the form of peace of mind and affection. As emphasized in Surah Ar-Rum (30): 21¹⁵

مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِّقَوْمٍ يَتَفَكَّرُونَ Allah's blessings وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ

Meaning: "And among the signs (of His greatness) is that He created mates for you from your own kind, so that you would be inclined and feel at ease towards them, and He created among you a feeling of love and affection. Verily in this there are indeed signs (of the greatness of Allah) for a people who think"

This verse is often referred to as the mawaddah wa rahmah verse, where there are three main pillars in the Islamic concept of marriage, namely:

1. Sakinah. The feeling of calm, peace, and serenity that comes from being with your partner.
2. Mawaddah. A feeling of physical and emotional love or affection that grows naturally.
3. Rahmah. Compassion, sacrifice, and empathy that maintain household harmony in times of joy and sorrow.

The view in this verse is relevant to the definition of psychological violence in Article 1 and Article 5 letter b of the Domestic Violence Law.¹⁶, encompassing acts that cause fear, loss of self-confidence, and psychological suffering in the victim. This demonstrates that both Islamic law and Indonesian positive law recognize that violence is not only physical.

Furthermore, in the book *Al-Halal wal Haram fil Islam*, Al Qardawi explains that although QS An Nisa (4): 34 textually permits certain actions towards a wife who is nusyuz, there are strict limits that must be obeyed. For example, it is forbidden to hit the face, it is forbidden to hit in a way that hurts or causes harm, and even the Prophet Muhammad himself personally never hit his wives or slaves throughout his life.¹⁷.

This prohibition on hitting the face is not just a recommendation, but is based on a valid hadith narrated by Bukhari and Muslim which emphasizes that anyone who wants to hit someone must avoid the face.¹⁸. This provision is reinforced by a hadith narrated by Abu Dawud from

¹⁵Yusuf Qardhawi, *Contemporary Fatwas*, Volume I, Op. Cit. Discussion of "The Rights of a Wife over Her Husband" p. 28; Al-Qur'an, Qs. Ar Rum (30): 21

¹⁶Republic of Indonesia, Law Number 23 of 2004, Article 1 and Article 5 letter b.

¹⁷Yusuf Qardhawi, *Halal and Haram in Islam*, Op.Cit., Chapter Three, sub-chapter 3.2.19

¹⁸Al-Bukhari, *Sahih al-Bukhari*, Book of an-Nikah, Hadith No. 2372; Muslim ibn al-Hajjaj, *Sahih Muslim*, Book of al-Fadhail, Hadith No. 2612

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Hakim bin Mu'awiyah, which states three explicit prohibitions for husbands, namely not to hit their wife's face, not to criticize her, and not to leave her outside the house.¹⁹ Condemnation of husbands who beat their wives is also emphasized in a hadith which states that a person who whips his wife like whipping a slave, then has sexual intercourse with her in the afternoon, is not included among the good people among his people.²⁰ It was even narrated from Aisha ra that the Prophet Muhammad SAW never hit his slaves or wives with his hands, except in the context of jihad in the path of Allah.²¹

Yusuf Al Qardawi also quotes Ibn Hajar's view that "the righteous among you will not beat (his wife)." Although this hadith does not change the textual provisions contained in the Qur'an, its meaning provides an affirmation that household resolution should not prioritize physical violence. This principle shows that Islam, long before the birth of modern law, had already established a moral framework that limits violence in the family from the beginning, as also emphasized in Qs. An Nisa (4): 19 regarding the obligation to treat wives in a proper manner (mu'asyarah bil ma'ruf).²² A framework that is essentially in line with the spirit of the Domestic Violence Law, even though the two arise from different sources of authority. Revelation vs. state legislation.

3.2. Meeting Point Between Hifdzun Nafs and Regulations on the Protection of Women and Children

From the explanation above, three points of intersection can be identified between the principle of Hifdzun Nafs and Indonesian positive law.

1. Both recognize psychological violence as a form of violence that is as serious as physical violence. Qs Ar Rum: 21 and Al-Qardawi's fatwa on wives' rights emphasize the importance of inner peace, as Article 5 letter b of the Domestic Violence Law explicitly criminalizes psychological violence.²³ This meeting point is relevant considering that CATAHU 2025 data shows psychological violence as the most dominant form of violence against wives.
2. Both emphasized that the family is the smallest sphere that must be protected by both the state and religion from violence, not a private space that is immune from the law. The Domestic Violence Law was created precisely to break down the long-held notion that

¹⁹Abu Dawud, Sunan Abi Dawud, Kitab an-Nikah, No. Hadith 2142

²⁰Al-Bukhari and Muslim,

²¹Ahmad bin Hambal, Musnad Ahmad 6:229.

²²Al-Quran, Qs. An-Nisa (4): 19

²³Republic of Indonesia, Law Number 23 of 2004, Article 5 letter b, Op.Cit

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domestic violence is a "family disgrace" that should not be interfered with by outsiders. This paradigm aligns with Islamic teachings that injustice within the household (between wife and children) remains a violation of rights that must receive public attention, as stipulated in the mechanism for sending hakam (peacemakers) from both sides of the family in the event of a protracted dispute.

3. Both place the prohibition of violence against children as part of family protection. This aligns with Article 76C and Article 80 of the Child Protection Law.²⁴ which prohibits physical and psychological violence, and the principle of Hifdzun Nafs, which emphasizes protecting children as the most vulnerable group in the family. The urgency of this protection is reinforced by 2024 KPAI data, which shows that the most common perpetrators of violence against children are biological parents.

3.3. Implementation Gaps and the Need for Value Integration

Despite strong conceptual alignment, gaps remain at the implementation level. The data presented in the background shows a 14.07% increase in GBV cases.²⁵ The high trend of violence against children, according to the Indonesian Child Protection Commission (KPAI), indicates that normative knowledge (both positive law and religious values) has not been successfully implemented in everyday household behavior. This gap occurs due to at least two factors:

First, the enforcement approach to the Domestic Violence Law is reactive because it is a complaint-based offense as regulated in Article 26 paragraph 1 of the new 2023 Criminal Code.²⁶, thus heavily dependent on the victim's courage to report. Meanwhile, the reality is that family culture actually views domestic violence as a "disgrace," hindering the effectiveness of existing legislation. It is also reinforced by erroneous and partial religious understandings, such as the interpretation of Surah An-Nisa: 34, which is read at face value without considering the boundaries taught by the Prophet Muhammad (peace be upon him).

Second, the socialization of the Hifdzun Nafs value as a moral framework for preventing domestic violence has not been systematically integrated into existing institutions, such as the KUA, majelis taklim, and premarital education.

²⁴Republic of Indonesia, Law Number 35 of 2014, Article 76C and Article 80, Op.Cit.

²⁵National Commission on Violence Against Women, Annual Report Fact Sheet (CATAHU) 2025, Op.Cit., p. 1

²⁶Republic of Indonesia, Law Number 23 of 2004, Article 26, Op.Cit.

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This is where the Hifdzun Nafs approach's primary contribution lies: not to replace the Domestic Violence Law, but rather to fill a gap in prevention that legal approaches alone cannot reach, namely, fostering moral awareness before violence occurs. This is done by leveraging the authority of religious values, which are sociologically more trusted by the public than formal legal institutions.

4. Conclusion

Based on the analysis that has been presented, two main things can be concluded according to the formulation of the research problem: 1. The principle of Hifdzun Nafs in Maqashid Syariah has substantive relevance to legal protection for women and children who are victims of domestic violence in Indonesia. Islamic teachings, as explained by Yusuf Al-Qardawi in *Al Halal wal Haram fil Islam* and contemporary fatwas, strictly prohibit physical violence that is harmful, especially hitting the face, as well as psychological violence in the form of insults and insults against wives, and places inner peace (sakinah, mawaddah, wa rahmah) as the main goal of the family. This principle is in line with the spirit of Law Number 23 of 2004 concerning Domestic Violence and Law Number 35 of 2014 concerning Child Protection, who are both vulnerable to physical and psychological violence as violations of human rights. 2. The integration of Hifdzn Nafs values into existing policy frameworks serves to strengthen prevention aspects, not replace existing positive law, thereby complementing the limitations of legal approaches that tend to focus on enforcement. Data from the National Commission on Violence Against Women's 2025 CATAHU and the KPAI 2024 Annual Report show that the increase in domestic violence against women and children continues to occur, even though policies and laws have been in place for decades. This indicates that the problem of domestic violence is not simply a lack of regulations, but rather a gap between norms and societal awareness. The Hifdzn Nafs values, which are derived from religious teachings by the majority of Indonesians, have the potential to strengthen violence prevention efforts more effectively, thereby complementing the reactive formal legal approach.

5. References

Books:

Abu Dawud, Sulaiman bin al-Asy'ats. (t.th.). Sunan Abi Dawud, Kitab an-Nikah (No. Hadis 2142). Semarang: CV. Asy Syifa'.

Ahmad bin Hanbal. (1419 H). Musnad Ahmad (Cet. 1). Daar 'Aalamil-Kutub.

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Al-Bukhari, Muhammad bin Ismail. (t.th.). Shahih al-Bukhari, Kitab an-Nikah (No. Hadis 4942). PT Elex Media Komputindo.

Al-Qardawi, Yusuf. (1993). Halal dan Haram dalam Islam (M. Hamidy, Penerj.). Surabaya: PT. Bina Ilmu.

Al-Qardawi, Yusuf. (t.th.). Fatwa-fatwa Kontemporer (Jilid 1). ISNET.

Al-Qur'an dan Terjemahannya. Qs. An-Nisa (4): 19, 34; Qs. Ar-Rum (30): 21.

Muslim bin al-Hajjaj. (2012). Shahih Muslim, Kitab al-Fadhail (No. Hadis 2612). Jakarta: Almahira.

Regulation:

Indonesian Child Protection Commission. (2025). KPAI Annual Report 2024: The Steep Path of Child Protection and Serious Threats to Indonesia's Golden Generation. Jakarta: KPAI.

National Commission on Violence Against Women (Komnas Perempuan). (2026). 2025 Annual Record (CATAHU) Fact Sheet: Strengthening Data, Addressing Vulnerabilities, and Urging State Action for Victim Justice. Jakarta: Komnas Perempuan.

Republic of Indonesia. (2004). Law Number 23 of 2004 concerning the Elimination of Domestic Violence. State Gazette of the Republic of Indonesia Year 2004 Number 95.

Republic of Indonesia. (2014). Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. State Gazette of the Republic of Indonesia Year 2014 Number 297.

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