



A Comparative Study of Electronic-Based Sexual Violence: Maqashid Shari'ah Perspective on Indonesia's Law No. 12 of 2022 and Malaysia's Legal Framework

Luciana Anggraeni¹, Zainab Az Zahro², Siti Syahirah Safinee³

Universitas Muhammadiyah Malang ^{1,2}, University Sains Islam Malaysia³

Email: luciana@umm.ac.id¹, azzahra834@gmail.com²,
syahirah.saffinee@usim.edu.my³

Abstract

This article explores how electronic-based sexual violence is addressed within two Muslim-majority countries, Indonesia and Malaysia, from the perspective of Maqashid Shari'ah which is the higher objectives of Islamic law. Using a normative-juridical approach and literature review supported by case examples, the study assesses to what extent the legal frameworks of both countries align with the five foundational principles (al-dharuriyat al-khamsah) such as protection of religion (din), life (nafs), intellect ('aql), lineage (nasl), and property (mal). Indonesia's Law No. 12 of 2022 identifies key offenses such as non-consensual recording, distribution of sexual content, and online stalking, but its implementation is still partial (tadarruj), with notable gaps in preventive mechanisms, victim recovery, and sharia-aligned sanctions. Meanwhile, Malaysia's legal response is fragmented across civil and Syariah laws, lacking a unified digital sexual violence law, though it provides important insights into religious legal integration. This study finds that while both legal systems reflect elements of Maqashid Shari'ah, neither fully realizes its comprehensive application. Furthermore, a lack of consistent jurisprudence in both jurisdictions highlights the need for institutional clarity and better enforcement. The article contributes to the discourse by offering a cross-country Islamic legal analysis and proposing a more integrative framework rooted in Maqashid Shari'ah to respond to digital sexual crimes ethically and effectively.

Keywords: *Electronic-Based; Sexual Violence; Maqashid Shari'ah; Indonesia, Malaysia.*

Abstrak

Artikel ini membahas bagaimana kekerasan seksual berbasis elektronik ditangani di dua negara berpenduduk mayoritas Muslim, Indonesia dan Malaysia melalui sudut pandang Maqashid Shari'ah, tujuan hukum Islam yang lebih tinggi. Dengan menggunakan pendekatan normatif-yuridis dan tinjauan pustaka yang didukung oleh contoh kasus, penelitian ini menilai sejauh mana kerangka hukum kedua negara tersebut selaras dengan lima prinsip dasar (al-dharuriyat al-khamsah) yaitu perlindungan agama (din), kehidupan (nafs), akal ('aql), keturunan (nasl), dan harta benda (mal). Undang-Undang Indonesia No. 12 Tahun 2022 mengidentifikasi pelanggaran utama seperti perekaman tanpa persetujuan, distribusi konten seksual, dan penguntitan daring, tetapi implementasinya masih parsial (tadarruj), dengan kesenjangan yang nyata dalam mekanisme pencegahan, pemulihan korban, dan sanksi yang selaras dengan syariah. Sementara itu, respons hukum Malaysia terfragmentasi di antara hukum perdata dan Syariah,

tidak memiliki undang-undang kekerasan seksual digital yang terpadu, meskipun undang-undang tersebut memberikan wawasan penting tentang integrasi hukum agama. Studi ini menemukan bahwa meskipun kedua sistem hukum tersebut mencerminkan unsur-unsur Maqashid Syariah, keduanya tidak sepenuhnya mewujudkan penerapannya secara komprehensif. Lebih jauh, kurangnya yurisprudensi yang konsisten di kedua yurisdiksi menggarisbawahi perlunya kejelasan kelembagaan dan penegakan hukum yang lebih baik. Artikel ini berkontribusi pada wacana dengan menawarkan analisis hukum Islam lintas negara dan mengusulkan kerangka kerja yang lebih integratif yang berakar pada Maqashid Syariah untuk menanggapi kejahatan seksual digital secara etis dan efektif.

Kata Kunci: *Kekerasan Sekusal; Berbasis Online; Maqashid Syariah; Indonesia; Malaysia.*

Introduction

The rapid development of technology has significantly transformed human interactions, making daily activities more efficient. However, these advancements have also created new opportunities for criminal activities, including Electronic-Based Sexual Violence (EBSV). Unlike traditional forms of sexual violence, electronic based sexual violence does not always involve direct physical contact; instead, the internet enables perpetrators to exploit digital platforms for their crimes. Common examples of electronic based sexual violence include cyber harassment, sextortion, and sexting, which have become increasingly prevalent in the digital age. This highlights the urgent need for legal and ethical measures to prevent and turn back such offenses effectively (Lewis et al., 2022).

In response, Indonesia enacted Law No. 12 of 2022 on Sexual Violence Crimes. While this law provides a more structured and victim-centered legal framework than its predecessors, such as the Electronic Information and Transactions (ITE) Law or the Pornography Law, many challenges remain in its enforcement. Victims continue to face institutional obstacles, including procedural delays, inadequate support systems, and limited access to justice. Furthermore, while the law outlines preventive and rehabilitative mechanisms, implementation often falls short due to capacity gaps within law enforcement and judicial bodies.

Data indicates a significant rise in Electronic-Based Sexual Violence crimes between 2017 and 2021. According to Komnas Perempuan (National Commission on Violence towards Women, 2021), online gender-based crimes, including electronic based sexual violence, are particularly complex. Reports show an increase from 65

cases in 2017 to 281 cases in 2019 (Komnas Perempuan, 2021). Furthermore, SafeNet data (2021) reveals that electronic based sexual violence cases tripled, while CATAHU 2021 recorded a sharp rise from 281 cases in 2020 to 940 cases in 2021. This trend continued over the following years, as reported in CATAHU 2022 (Ishak, 2020).

The Criminal Code, Law No. 22 of 2008 on Pornography, and Law No. 11 of 2008 on Information and Electronic Transactions (ITE Law) are among the existing legal frameworks that have not been able to adequately address electronic based sexual violence. Due to gaps in these regulations, victims have occasionally even been criminalized (Wardadi & Manurung, 2019). Law No. 12 of 2022 on Sexual Violence Crimes was passed in May 2022 as a result of this legislative deficiency. A more thorough legal framework is offered by Law No. 22 of 2008, which describes the definitions, categories, and sanctions for those who commit sexual violence, including electronic based sexual violence (Akmal et al., 2021)

Despite Indonesia's majority Muslim population (approximately 80% or 273.32 million people as of December 2021), electronic-based sexual violence remains prevalent. While Islam strictly prohibits all forms of sexual violence, the mere presence of religious principles does not guarantee that individuals will refrain from deviant behaviour (Jamil et al., 2022). Islam provides a moral and legal framework that guides individuals and society, outlining clear distinctions between permissible and forbidden acts. However, this does not imply that every individual will adhere to these teachings.

Given that Indonesia and Malaysia are both Muslim-majority countries with parallel socio-legal contexts, a comparative legal study is timely and necessary. Malaysia, unlike Indonesia, relies on a combination of civil and Syariah-based regulations, such as the Penal Code (Sections 292 and 509), Communications and Multimedia Act 1998 (Section 233), the Sexual Offences towards Children Act 2017, and the Syariah Criminal Offences Act (Federal Territories) 1997 (Shuaib, 2018). However, the fragmentation between jurisdictions often results in inconsistent protections for victims, particularly in digital contexts.

This article examines how both Indonesia and Malaysia address electronic-based sexual violence through the lens of *maqāṣid asy-sharī'ah* (objectives of Islamic law), which serves as a framework for evaluating the alignment of legal systems with Islamic ethical values. These principles include the protection of religion (*dīn*), life (*nafs*), intellect (*'aql*), lineage (*nasl*), property (*māl*), and, increasingly emphasized in contemporary discourse, honor and dignity (*'irdh*) (Solikin & Wasik, 2023).

Rather than relying on a literalist interpretation of Islamic texts, none of which directly address modern technological crimes. This

study adopts a contextualized approach, understanding electronic-based sexual violence as a contemporary manifestation of harm (*mafsadah*). The comparative analysis aims to assess both regulatory content and the effectiveness of legal implementation in Indonesia and Malaysia, identifying gaps and proposing recommendations for harmonizing Islamic legal principles with modern protective frameworks.

One of the primary challenges in addressing electronic-based sexual violence within an Islamic legal framework is the absence of direct textual references in classical sources, as such crimes did not exist during the time of the Prophet Muhammad. The Qur'an and Hadith do not explicitly mention technology-facilitated sexual misconduct, making its legal categorization a matter of interpretation and reasoning (*ijtihad*) based on general Islamic principles. To address this gap, contemporary Islamic legal scholarship has turned to the framework of *maqāṣid asy-syarī'ah* (objectives of Islamic law), which provides a philosophical and jurisprudential basis for responding to new forms of harm. Prior research, such as Busroh (2018), emphasizes the role of *maqāṣid* in extending legal reasoning to modern contexts where the original texts are absent.

However, while Law No. 12 of 2022 represents a regulatory effort to criminalize and prevent sexual violence, including its electronic forms, the distinction between the law's normative formation (regulation) and its practical application (jurisprudence/law enforcement) is not always clear. Jurisprudence, in this context, refers to how courts interpret and enforce such provisions in real cases, which remains inconsistent and underdeveloped. This article, therefore, focuses on analysing the alignment between the regulatory content of Law No. 12 of 2022 and the core principles of *maqāṣid asy-syarī'ah*, particularly in the protection of religion (*dīn*), life (*nafs*), intellect (*'aql*), lineage (*nasl*), and property (*māl*).

Rather than forcing a literalist linkage, this study adopts a contextualized *maqāṣid*-based approach, recognizing electronic-based sexual violence as a contemporary form of harm (*mafsadah*) that threatens the essential values protected in Islamic law. As such, the prohibition of this crime is seen not only as a legal necessity but also as a moral obligation to uphold justice (*'adl*) and human dignity (*karāmah al-insān*).

Research Method

This study adopts a normative juridical method with a comparative approach, aiming to critically examine how Indonesia and Malaysia regulate electronic-based sexual violence in light of *maqāṣid asy-sharī'ah* (the objectives of Islamic law). The research is entirely library-based, relying on

the systematic collection, analysis, and interpretation of secondary data, particularly legal documents, scholarly writings, and religious texts.

The primary legal sources include Indonesia's Law No. 12 of 2022 on Sexual Violence Crimes, particularly provisions related to electronic-based offenses (Ika Dewi Sartika Saimima et al., 2022). Malaysia's legal instruments, such as the Penal Code (Sections 292, 509), the Communications and Multimedia Act 1998 (Section 233), the Sexual Offences Against Children Act 2017, and the Shariah Criminal Offences (Federal Territories) Act 1997 (Ramli et al., 2024). Secondary legal sources consist of academic journal articles, legislative drafts, legal commentaries, and policy reports discussing electronic-based sexual violence and its regulation in both countries. Tertiary sources include foundational Islamic legal texts such as works on *uṣūl al-fiqh* (Islamic legal theory), hadith collections, and interpretations of *maqāṣid asy-sharī'ah*, including contemporary elaborations on the principle of *Hifz al-'irdh* (protection of honor) (Tohari & Kholish, 2020).

The research method proceeded through several technical steps. First, data collection was conducted through library research, document analysis, and archival study, focusing on materials directly relevant to electronic-based sexual violence and Islamic legal principles. Following this, an inventory process was carried out to categorize all collected sources into primary, secondary, and tertiary groups, allowing for structural coherence. In the identification and selection phase, each source was evaluated for its relevance to the research questions and its alignment with *maqāṣid* values. Subsequently, materials were classified and organized thematically and jurisdictionally to support comparative analysis between Indonesia and Malaysia. Finally, systematization and interpretation were conducted using qualitative legal analysis, enabling an evaluation of each country's legal consistency, practical gaps, and ethical foundations, particularly concerning the six core *maqāṣid* values: religion (*din*), life (*nafs*), intellect (*'aql*), lineage (*nasl*), property (*māl*), and honor (*'irdh*) (Sugitanata, 2023).

This structured methodological approach allows the research to critically assess the normative and practical dimensions of electronic-based sexual violence laws in Indonesia and Malaysia, and to evaluate their alignment with Islamic legal objectives. Through this comparative framework, the study aims to propose integrative, ethically grounded legal reforms responsive to the realities of digital sexual crimes.

Results and Discussion

Legal Overview of Electronic-Based Sexual Violence in Indonesia

Sexual Violence is a complicated word to define if seen deeper since violence is often identified by some groups of people as behavior that leads to negative outcomes. However, others may define violence as a necessary action depending on its purpose. Violence can be defined as an act of aggression committed by individuals or groups to survive. The definition above aligns with Olweus's perspective on violence, which suggests that aggressive behavior by the perpetrator makes the victim uncomfortable due to inflicted injuries (Hasanah & Soponyono, 2018). Other experts, such as Nanang Martono, associates violence with terrifying and painful events that can sometimes be fatal. He argues that such behavior violates human rights. The World Health Organization (WHO) also connects violence with legal violations. WHO defines violence as the use of actual strength and power, danger, or threats against individuals or groups that result in injury, trauma, death, psychological harm, developmental abnormalities, or deprivation of rights (Rollero et al., 2023).

Violence and violent crime need to be carefully distinguished. From a criminological perspective, violence includes behaviors with varying motives and actions, making it challenging to determine the cause of crime. Generally, violence is linked to physical or psychological harm, and when such harm is inflicted unlawfully, it constitutes a crime. Threats of violence also fall under this category, as outlined in Articles 156 and 157 of Criminal Code Number 1 of 2023 (Rahmawati, 2020).

Article 156 defines violence as any act that, with or without physical force, causes danger to life, physical, sexual, or psychological suffering, and deprivation of freedom. Meanwhile, Article 157 classifies threats of violence as actions, whether verbal, written, or through electronic means, that induce fear or anxiety of impending violence. Internationally, the Declaration on the Elimination of Violence towards Women recognizes violence as a crime committed through physical, sexual, and psychological acts, whether by family members, the community, or the state. Based on various definitions, violence can be considered aggressive behavior resulting from an inability to control oneself.

Violence has severe consequences, making legal regulations crucial. Violence can be categorized into direct physical harm and psychological impact. It can also be divided into public domain violence (where the perpetrator and victim are not married) and domestic violence (occurring within marriage). Violence can further be classified as sexual or non-sexual. Sexual violence involves acts driven by sexual desire, either direct or technologically mediated, whereas non-sexual violence lacks this element (Denimah & Nurika, 2023).

The Indonesian Judicial Monitoring Society FH UI (MaPPI FH UI) defines sexual violence as actions that humiliate, insult, or attack a person's sexual autonomy, often through coercion or force, causing physical or psychological suffering (Soejoeti & Susanti, 2020). Another definition describes sexual violence as any verbal or non-verbal assault of a sexual nature without consent. The key elements in determining sexual violence are coercion and the victim's inability to give free consent. Before the passage of Sexual Violence Crime Law, sexual violence was referenced in several legal frameworks, including Law Number 23 of 2004 on the Elimination of Domestic Violence, which criminalized forced sexual acts within the household. Additionally, Law Number 26 of 2000 on Human Rights Courts classified sexual violence as rape, sexual slavery, forced prostitution, and forced sterilization, making them crimes when part of systematic attacks on civilians.

Law Number 44 of 2008 on Pornography prohibits explicit sexual acts from being disseminated publicly. Article 4 paragraph (1) criminalizes the production, distribution, or provision of pornography containing sexual violence, deviant sexual acts, masturbation, nudity, genital exposure, or child pornography. However, this law had weaknesses, such as the lack of victim protection, leading to the development of Sexual Violence Crime Law to address these gaps. Sexual Violence Crime Law recognizes both verbal and non-verbal sexual violence, particularly actions targeting reproductive organs or degrading a person's dignity.

Sexual Violence Crime Law outlines various forms of sexual violence in Article 4 paragraphs (1) and (2), including physical and non-physical sexual harassment, forced contraception, sterilization, forced marriage, sexual exploitation, electronic-based sexual violence, rape, indecent acts, and pornography involving children. Other offenses include forced prostitution, human trafficking for sexual exploitation, domestic sexual violence, and money laundering related to sexual crimes (Arif Sipahutar, 2022).

Law No. 12 of 2022 on Sexual Violence Crimes introduced a comprehensive legal framework, recognizing both verbal and non-verbal sexual violence and extending protection to victims of electronic-based sexual violence. Article 4 outlines 19 forms of sexual violence, including physical and non-physical harassment, sexual exploitation, rape, forced marriage, and pornography involving children. Particular relevance is Article 14, which explicitly addresses electronic-based sexual violence.

Article 14 criminalizes the following actions:

1. Recording or capturing sexually explicit images or screenshots without the subject's consent.
2. Transmitting sexual content via electronic means without the recipient's consent and for sexual purposes.

3. Engaging in electronic stalking or tracking for sexual purposes.

These provisions represent a legal milestone, filling gaps left by previous laws and offering improved protection and accountability. The rise in cases of electronic-based sexual violence, particularly during the COVID-19 pandemic, further underscores the urgency of such legal reforms. Terms like "Gender-Based Online Violence" and offenses such as cyber harassment, sextortion, doxing, and digital impersonation have gained prominence, with studies by Komnas Perempuan and SafeNet highlighting their growing prevalence.

Despite the advancements in regulation, enforcement challenges persist. Victims often struggle with reporting due to fear of retaliation or public shaming. Law enforcement agencies are still lack of specialized training to handle digital evidence and support survivors. Therefore, while the Sexual Violence Crime Law provides a comprehensive framework, its success depends heavily on effective implementation, public awareness, and systemic support for victims.

Malaysia's Legal Framework on Electronic-Based Sexual Violence

Malaysia's legal framework on Electronic-Based Sexual Violence (EBSV) remains fragmented, lacking a comprehensive and unified law specifically addressing the unique nature and complexity of such digital crimes. EBSV encompasses a wide array of harmful behaviours, including cyber harassment, online stalking, non-consensual distribution of intimate images or videos, sextortion (sexual extortion), and the unauthorized recording or dissemination of sexually explicit content. While these acts cause severe emotional, psychological, and social harm to victims – often targeting women and girls, the Malaysian legal system still addresses them through a patchwork of general laws, leaving considerable gaps in protection, enforcement, and survivor support (Oktrina, 2023). Despite some positive developments in recent years, Malaysia has yet to develop an integrated and dedicated legal response tailored specifically to the challenges posed by EBSV.

At present, cases involving EBSV are typically prosecuted under several existing statutes, including the Penal Code (Act 574), Communications and Multimedia Act 1998 (Act 588), Sexual Offences Against Children Act 2017, and Domestic Violence Act 1994 (Sharil & Ismail, 2020). Each of these laws addresses certain aspects of electronic abuse, but none provide a full legal definition or framework for EBSV as a distinct and rapidly evolving category of crime. The Penal Code criminalizes acts such as criminal intimidation (Section 503), insult or threat to modesty (Section 509), and stalking (introduced via Section 507A in 2023) (Suhakam, 2015). While these provisions may be used to prosecute

offenders in EBSV cases, they were not originally designed with the digital context in mind and often fall short when applied to cases involving sophisticated online platforms, anonymous threats, or cross-border digital harassment.

The Communications and Multimedia Act 1998 (CMA) plays a more prominent role in addressing EBSV-related offenses. Section 233 of the CMA criminalizes the “improper use of network facilities or services,” including the sharing of obscene, indecent, false, menacing, or offensive content intended to annoy, abuse, threaten, or harass another person. Although this provision has been used to prosecute perpetrators of online sexual harassment or image-based abuse, critics argue that the language of Section 233 is vague and overly broad (Prakoso & Kuswardani, 2018). Furthermore, the CMA does not provide a clear definition of consent, nor does it differentiate between types of digital sexual violence, such as the unauthorized distribution of intimate images versus persistent digital stalking. These limitations reduce the effectiveness of the CMA in providing meaningful protection for victims and fail to account for the emotional trauma caused by EBSV.

The Sexual Offences against Children Act 2017 addresses several forms of online sexual exploitation involving minors, including grooming, child pornography, and the use of children in sexually explicit communication or recordings. This legislation is one of the more specific tools available in Malaysia’s legal arsenal for tackling EBSV involving children and represents an important step forward. It includes provisions for extraterritorial jurisdiction, allowing Malaysian courts to prosecute offenses committed abroad, and emphasizes the protection of children from sexual abuse in all environments, including digital spaces (Jalil, 2015). However, its scope is limited strictly to children under the age of 18, and thus does not extend to adult victims who also suffer similar abuses through electronic platforms.

Malaysia’s Domestic Violence Act 1994 (amended in 2017) offers some protection for victims of digital harassment within domestic or intimate partner relationships. For example, it recognizes psychological and emotional abuse, which can include digital stalking, controlling behaviour through online means, or threatening messages (Mohd Noor et al., 2020). However, this protection is only available to individuals who is under the legal definition of domestic relationships, such as spouses, former spouses, or family members. Therefore, individuals who are harassed or blackmailed by casual acquaintances, strangers, or online contacts are outside the scope of this Act.

In addition to statutory laws, Malaysia has also developed certain guidelines and institutional initiatives aimed at addressing online gender-based violence. For instance, the Ministry of Women, Family, and

Community Development has occasionally worked with NGOs to raise awareness about digital safety and gender-sensitive approaches to cybercrime. Civil society organizations such as the Women's Aid Organisation (WAO) and the All Women's Action Society (AWAM) have been at the forefront of advocating for a more comprehensive law on gender-based violence, including the digital dimension (Suhakam, 2015). In 2022, there was considerable civil society pressure on the government to table a Gender Equality Bill that would encompass online violence and promote legal reforms targeting discrimination and abuse in both public and private spheres. However, progress on such legislative efforts has been sluggish and the lack of political will has often stalled significant change.

Malaysia's current approach to EBSV suffers from several systemic shortcomings. First and foremost, the absence of a dedicated legal framework means that many cases are either underreported or not prosecuted effectively. Victims often find it difficult to identify the correct avenue for reporting, face institutional bias, or are dismissed due to lack of evidence. The digital nature of EBSV makes it difficult to trace perpetrators, particularly when they use anonymous accounts, fake profiles, or foreign-based servers. Law enforcement officers and the judiciary are not always adequately trained in handling digital evidence or understanding the psychological impacts of EBSV (Ushama & Jalil, 2020). Moreover, survivors frequently experience secondary trauma during legal proceedings, including victim-blaming or public exposure, which discourages them from seeking justice.

Another critical gap is the lack of support services specifically tailored to survivors of EBSV. Although general support systems exist for victims of gender-based violence, such as hotlines, shelter homes, and counselling services, they are not always equipped to deal with the distinct challenges posed by electronic abuse. Victims of image-based abuse, for example, often require quick legal assistance to take down unauthorized content from social media platforms, as well as specialized counselling to cope with the sense of shame and humiliation associated with such violations. In many cases, victims may lose their jobs, suffer academic setbacks, or become socially ostracized. Without targeted support mechanisms, the legal system fails to uphold the dignity and well-being of survivors (Mohamed Nazeri, 2010; Mohd Nor et al., 2022; Sharil & Ismail, 2020).

Religious and ethical frameworks, such as *maqāṣid ash-sharī'ah* (the higher objectives of Islamic law), have not yet been integrated meaningfully into Malaysia's approach to EBSV. This represents a missed opportunity, particularly in a Muslim-majority country where moral and spiritual principles could play a powerful role in guiding lawmaking,

public education, and institutional responses. *Maqāṣid* emphasizes the protection of religion, life, intellect, dignity, and property, all of which are severely undermined by EBSV. By invoking these values, policymakers could not only strengthen the ethical foundation of anti-EBSV laws but also encourage community and religious leaders to engage in preventive education and moral guidance. A law grounded in both human rights and Islamic principles could have broader acceptance and moral authority, especially in conservative communities where legal reforms are often encountered with scepticism.

In recent years, there has been growing public awareness and calls for a more unified and comprehensive approach to addressing sexual violence, both offline and online. In 2021, the Malaysian government initiated consultations on a Sexual Harassment Bill, which was passed in 2022. While the Bill represents progress in recognizing sexual harassment in all forms, including verbal, physical, and visual, it remains limited in its applicability to digital contexts and does not fully address the spectrum of EBSV (Kirama Nasim Manbi Ushama & Juriah binti Abdul Jalil, 2020). Critics argue that without a clear legal definition of EBSV and comprehensive procedural guidelines for investigation, prosecution, and victim support, the Bill falls short of offering real protection in the digital realm.

Malaysia's legal framework on Electronic-Based Sexual Violence remains inadequate and fragmented, relying on outdated and generalized laws that were not crafted to address the digital age's unique challenges. While various statutes like the Penal Code, CMA, and child protection laws offer partial remedies, they are lack of a cohesive vision and fail to center the experiences of victims. To move forward, Malaysia must enact a specific, well-defined law on EBSV that integrates human rights, digital ethics, and Islamic moral values. This law should offer clear definitions, consistent penalties, and robust mechanisms for enforcement, victim support, and public education. Only then can Malaysia create a legal and moral environment in which the dignity, safety, and rights of all individuals—especially women and vulnerable communities are fully protected in both the physical and digital worlds.

Maqashid Shari'ah Perspective on Indonesia's Law No. 12 of 2022 and Malaysia's Legal Framework

Electronic-Based Sexual Violence (EBSV) represents a serious and multifaceted challenge in today's digital age, particularly in Muslim-majority countries like Indonesia and Malaysia, where the integration of religious principles such as *Maqāṣid ash-Sharī'ah* the higher objectives of Islamic law is crucial for shaping just and ethical

responses. EBSV includes a broad range of harmful acts perpetrated through digital means, such as secretly recording or capturing sexual content, disseminating explicit material without consent, stalking or tracking individuals for sexual purposes, and coercing victims through threats (known as sextortion). These actions not only violate secular laws but also directly oppose core Islamic principles such as modesty (*hayā'*), the protection of privacy, and the command to “lower the gaze” as instructed in the Qur'an (24:30–31). When someone secretly records and distributes sexual material, they cause lasting emotional, psychological, and social harm to the victim, who often suffers from intense shame, anxiety, and isolation. From an Islamic perspective, this behaviour is deeply immoral and forbidden, as it harms individuals and the wider community, undermining dignity and eroding trust.

A vivid example of EBSV occurred in Central Kalimantan, Indonesia, where a woman, during a private video call, was secretly recorded by her partner. The perpetrator later used the recording to blackmail her emotionally and financially. Such cases exemplify the insidious nature of EBSV: victims often feel helpless and humiliated into silence, while perpetrators exploit their power anonymously. The psychological trauma, combined with societal stigma, particularly in conservative communities makes recovery extremely difficult for victims. Not only does this represent a serious crime under Indonesia's recently passed Law No. 12 of 2022, but it also constitutes a clear violation of Islamic teachings that protect human dignity and prohibit any form of *zulm* (oppression). The law criminalizes these acts explicitly, yet its effectiveness hinges on implementation, societal awareness, and alignment with deeper moral principles.

Shari'ah is not simply a list of prohibition, it is a comprehensive ethical system that seeks to protect five core values known as the *maqāṣid*: religion (*dīn*), life (*nafs*), intellect (*'aql*), lineage (*nasl*), and property (*māl*) (Solikin & Wasik, 2023). EBSV undermines all of these objectives. It corrupts spiritual integrity by promoting immodesty and undermining ethical conduct; it endangers life through emotional trauma and, in severe cases, suicide; it impairs the intellect by desensitizing individuals to immorality and violating boundaries; it threatens lineage by damaging families and leading to broken marriages or social humiliation; and it exploits wealth by extorting victims financially. Hence, protecting individuals from EBSV is not only a legal matter but a moral and religious imperative. Islam encourages the removal of harm (*raf' al-darar*) and the establishment of societal welfare (*maṣlahah*), both of which are foundational to addressing EBSV effectively.

In 2022, Indonesia took a significant step by passing Law No. 12 concerning sexual violence, which directly addresses several forms of EBSV. The law outlines various offenses such as non-consensual recording or photographing of sexual content, electronic distribution of such material, and digital stalking or harassment. These acts carry legal penalties including imprisonment and fines. This legislative move aligns with *maqāṣid* principles in many ways, especially in protecting life, dignity, and property. However, a closer examination reveals gaps between the law's text and its application. While the law criminalizes EBSV, it does not explicitly integrate *maqāṣid* as a guiding framework, which could enhance its moral and educational force. Furthermore, it focuses heavily on punishment without incorporating preventative or rehabilitative strategies. An ideal approach would include ethical guidance and restorative justice mechanisms, enabling not only legal accountability but also spiritual and moral healing.

Malaysia, meanwhile, has yet to adopt a similarly comprehensive law. Its legal responses to EBSV are fragmented, scattered across general criminal statutes such as the Penal Code and the Communications and Multimedia Act (CMA) 1998. While these laws prohibit acts like harassment, obscenity, and intrusion into privacy, they often lack the specificity to address nuanced forms of EBSV like sextortion or non-consensual image distribution. (Mohd Noor et al., 2020) Moreover, enforcement is inconsistent; victims often face barriers in lodging reports, and digital evidence is difficult to secure. Courts and law enforcement agencies are not always well-equipped to handle the unique psychological and technological dimensions of EBSV. Another shortcoming is the absence of an ethical-religious framework like *maqāṣid*, which could help in interpreting laws, shaping public discourse, and guiding moral education. A reformed Malaysian approach could include a unified legal framework informed by both modern human rights standards and Islamic ethical teachings (Oktrina, 2023).

Despite the strong language of Indonesia's new law, implementation remains a challenge. Many police officers and legal professionals lack training in cyber-forensics, victim-centred interviewing techniques, and psychological support. As a result, some victims are discouraged from pursuing justice, especially in regions where internet literacy is low and societal stigma against victims remains high. In some cases, victims have reported being blamed on their choices, such as sending a private video or engaging in consensual online relationships. This kind of victim-blaming culture must be actively dismantled through legal reform and education. Law enforcement agencies must be trained not only in technical skills but

also in ethical sensitivity, especially regarding modesty, privacy, and gender equity. The spirit of Islamic justice requires that the burden of blame rests squarely on the perpetrator, not the victim.

Victim support is another area where improvement is necessary. Islamic teachings uphold the dignity and well-being of every individual, especially those who have been wronged. The principle of *hifz al-nafs* (protection of life and psychological well-being) demands that society provide comprehensive support to survivors of EBSV. This includes trauma-informed psychological counselling, confidential and accessible reporting channels, protective legal orders, peer support groups, and, where necessary, financial assistance for those whose careers or education have been disrupted (Ushama & Jalil, 2020). Victims must be empowered to seek justice without fear of further humiliation. They should also be given the opportunity to recover emotionally and spiritually, with the support of both professional and religious counsellors. Only by prioritizing healing alongside justice can we uphold the true spirit of *maqāṣid* in legal and social practice.

To better align with *maqāṣid* and maximize the law's effectiveness, several reforms are recommended. Legislators should revise existing statutes to explicitly mention *maqāṣid* principles, reinforcing the moral and divine foundations of legal action. Law enforcement should receive specialized training in digital forensics, trauma-informed care, and ethical procedures for handling sensitive content. Judges and prosecutors should be educated in Islamic legal theory to integrate moral considerations into sentencing and restorative justice. Victim support services should be centralized and well-funded, including one-stop centers for women and children (Prakoso & Kuswardani, 2018). Confidential digital hotlines, safe houses, and legal aid must be accessible, especially in rural areas. Religious leaders should be involved in public education campaigns, teaching the importance of consent, digital ethics, and the prohibition of all forms of exploitation. Mosques, schools, and religious centres should host workshops on Islamic digital etiquette, making it a part of everyday discourse.

From a technological standpoint, collaboration with social media platforms and telecom companies is vital. Rapid takedown mechanisms, AI-driven content moderation, and secure reporting channels can help reduce the spread of explicit content and hold perpetrators accountable. Victims must have the ability to report harmful content swiftly and have it removed without navigating complex bureaucratic processes. Transparency in these procedures will build trust and encourage more victims to come forward. Further, integrating digital literacy into school curriculums framed by *maqāṣid*

can instil ethical behaviour in young users, teaching them the consequences of digital abuse and the value of modesty, respect, and privacy.

Malaysia can learn from Indonesia's approach by consolidating its scattered laws into a cohesive legal framework on sexual violence, including explicit references to EBSV. This framework should be supported by Islamic scholars and civil society, making it both legally robust and ethically grounded. Creating specialized digital courts, establishing ethical codes for online conduct, and offering widespread public education are crucial next steps. Additionally, regional cooperation among Muslim-majority countries could lead to shared best practices, unified definitions, and consistent standards rooted in shared moral values.

Additionally, another principle in Islamic governance states that a leader's policies must be based on public benefit. This aligns with the broader purpose of *maqashid sharia*, ensuring the protection of religion, life, intellect, lineage, and property. Upholding these five aspects is crucial in creating a just and ethical society that safeguards individuals from harm, such as:

1) **Preservation of Religion**

Allah has revealed the Shari'a as a guide to help humans avoid disobedience. However, upholding and practicing religious teachings is equally important. When individuals follow the Shari'a, it benefits their personal well-being and purifies their soul (Harisudin & Choriri, 2021). Violations of Islamic principles, such as Electronic-Based Sexual Violence, cause harm and contradict religious teachings.

Sexual Violence Crime Law identifies three forms of electronic-based sexual violence:

- a) Recording, photographing, or taking screenshots of someone without their consent, whether done secretly or openly.
- b) Transmitting electronic content of a sexual nature without the recipient's consent.
- c) Stalking or tracking someone with sexual intent.

All these actions are prohibited in Islam and included in the category of *dharuriyat* (necessities), meaning they must be avoided. Those who engage in such actions fail to uphold their religious obligations. True adherence to faith involves controlling one's behaviour and avoiding what is prohibited (Munir, 2019). If someone exposes their *aurat* (private parts) online, making it socially acceptable, they are in risk of being exploited by others who may capture and distribute such content. While perpetrators bear the primary responsibility, Islam also commands individuals to safeguard their

modesty. Sharing personal content on social media – even for personal pleasure – is still considered *haram* (forbidden). Thus, both victims and perpetrators are responsible for preserving religious values.

Buya Yahya, a respected Islamic scholar, once explained that recording oneself is not inherently prohibited. However, if such recordings lead to actions that violate Islamic principles – such as being misused or leaked – it results in sin (Alhadi et al., 2021). Since digital content can be intercepted or misused unexpectedly, it is best to avoid recording oneself unnecessarily.

2) Preserving the Life/Soul

The essence of protecting life in Islam lies in following divine commandments that prevent harm. Islam highly values human life, enforcing *qisas* (retributive justice) even in cases where a non-Muslim is killed. This demonstrates Islam's commitment to safeguarding all lives (Haq, 2020). Electronic-based sexual violence related crimes violate this principle, as they cause emotional distress, psychological trauma, and, in extreme cases, push victims toward self-harm or suicide. Islam strictly forbids actions that inflict harm on others. Whether one is a perpetrator, a victim, or an ordinary citizen, everyone has a responsibility to protect life and prevent actions that lead to harm.

3) Preservation of Intellect

Islam also emphasizes the importance of preserving the intellect, ensuring that people do not engage in actions that corrupt their minds. Keeping one's thoughts pure and avoiding immoral desires is a necessity (*dharuriyat*). Electronic-based sexual violence actions – such as creating, sharing, or consuming explicit content – are haram and damage one's moral reasoning. Humans are granted intellect to distinguish between right and wrong. They should use this gift to understand and adhere to the teachings of the Qur'an and Shari'a (Zuhdi et al., 2024). If both perpetrators and victims carefully considered the potential consequences of recording explicit content, they could prevent future harm. By actively seeking knowledge and learning from past cases, individuals can reduce the prevalence of electronic-based sexual violence crimes.

4) Preservation of Lineage

One of Islam's fundamental teachings is the preservation of lineage, ensuring that future generations are raised in a moral and ethical environment. This is achieved through marriage and proper upbringing in accordance with Islamic values. Violating this principle through immoral acts disrupts the foundation of family and society.

The Qur'an (Al-Baqarah: 183) teaches that fasting can help individuals control their desires (Alfitra et al., 2023). If someone struggles with restraining their lust, they should seek lawful outlets such as marriage, rather than engaging in sinful acts. Electronic-based sexual violence behaviours, such as recording or distributing explicit content, stem from an inability to control desires and should be redirected toward lawful and ethical alternatives.

5) Preservation of Wealth

Islam also provides guidance on how wealth and resources should be used responsibly. Engaging in *muamalah* (daily transactions) in a lawful manner brings rewards, but using property for sinful activities leads to harm. Since mobile phones and digital platforms are essential in modern life, their use should align with Islamic values. Using them for improper purposes—such as creating or spreading explicit content—violates the principle of wealth preservation and may result in financial losses, legal consequences, or emotional harm. Thus, abandoning sinful digital activities is an obligation.

The five Maqashid Shari'a (objectives of Islamic law) are interconnected and serve as a measure of the benefits of Islamic regulations. In the digital age, it is crucial to use technology wisely, considering both its potential harm and benefits. Digital media users must be mindful of their actions, ensuring they neither become victims due to their own mistakes nor perpetrators due to uncontrolled desires. For academics and researchers, further exploration of electronic-based sexual violence and sexual violence crime law from different perspectives is necessary, particularly in understanding its implementation. Additionally, the government should expedite the enactment of regulations that outline procedures for the protection and recovery of electronic-based sexual violence victims. This would enhance efforts to safeguard victims and uphold justice against such crimes.

Conclusion

Electronic-Based Sexual Violence is not merely a legal infraction, it is a violation of ethical and spiritual norms. It inflicts deep harm that resonates across all five maqāshid protections. Islamic moral principles, codified in Shari'ah and adjudicated through maqāshid, provide a powerful framework to condemn, prevent, and punish these offenses while supporting victims holistically. Indonesia's Law No. 12 of 2022 represents a landmark step forward. However, its true potential will only be realized through consistent enforcement, victim support, professional capacity-building, maqāshid informed interpretation, and societal change. Learning from

Malaysia's struggles, Indonesia should aim to embed moral, ethical, and legal alignment in its approach to Electronic-Based Sexual Violence. The ultimate purpose of Sharia is not merely punishment, it is *tazkiyah* (ethical purification), *islah* (moral reform), and *maslahah* (public welfare). Enshrining these principles in legislation, public policy, community education, and technology use will lead to a digital society that is safer, more just, and spiritually aligned. Only then can we claim real progress in battling Electronic-Based Sexual Violence, legal, moral, and spiritual.

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