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The Legal Challenge of Marital Rape: Bridging Islamic Law and Indonesia's Anti-Violence Statute

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Abstract

In Islamic law, there are two views on marital rape: one rejects it because marriage is considered a lifelong consent to sexual relations. At the same time, the other recognizes the possibility of marital rape within a marriage. Unlike UU-PKDRT, marital rape receives strict penalties. This study aims to identify and analyze the legal sanctions for marital rape in UU-PKDRT and Islamic criminal law, compare the sanctions of both laws, and explain the concept of takzir for marital rape. The research method is juridical-normative, using qualitative data and three frameworks: credo theory, legal change, and takzir. The study results show that UU-PKDRT, which includes marital rape, does not contradict Islamic law and therefore should be obeyed by Ulil Amri.

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The legal sanctions are relevant and in accordance with takzir; sexual relations are a mutual right of husband and wife, and forced sexual relations in marriage are not considered rape but violence that can be sanctioned by takzir; marital rape is not considered rape in Islam because marriage negates fornication; Marital rape in UU-PKDRT is viewed as rape, but in Islamic law, it is only violence that can be sanctioned by takzir after reconciliation efforts. The new theory from this research states that marital rape is violence, not rape.

[Dalam hukum Islam, terdapat dua pandangan mengenai pemerkosaan dalam pernikahan: satu menolaknya karena pernikahan dianggap sebagai persetujuan seumur hidup untuk melakukan hubungan seksual. Sementara itu, pandangan lainnya mengakui kemungkinan terjadinya pemerkosaan dalam pernikahan. Berbeda dengan UU-PKDRT, pemerkosaan dalam pernikahan dalam hukum Islam dapat dikenai sanksi yang tegas. Penelitian ini bertujuan untuk mengidentifikasi dan menganalisis sanksi hukum terhadap pemerkosaan dalam pernikahan menurut UU-PKDRT dan hukum pidana Islam, membandingkan sanksi dari kedua hukum tersebut, serta menjelaskan konsep takzir terhadap pemerkosaan dalam pernikahan. Metode penelitian yang digunakan adalah yuridis-normatif dengan pendekatan data kualitatif dan menggunakan tiga kerangka teori: teori credo, perubahan hukum, dan takzir. Hasil penelitian menunjukkan bahwa UU-PKDRT yang mengatur tentang pemerkosaan dalam pernikahan tidak bertentangan dengan hukum Islam dan karenanya wajib dipatuhi oleh Ulil Amri. Sanksi hukum dalam UU-PKDRT dianggap relevan dan sesuai dengan konsep takzir; hubungan seksual adalah hak bersama antara suami dan istri, dan hubungan seksual secara paksa dalam pernikahan tidak dianggap sebagai pemerkosaan tetapi sebagai bentuk kekerasan yang dapat dikenai sanksi takzir; pemerkosaan dalam pernikahan tidak dianggap sebagai pemerkosaan dalam Islam karena pernikahan menghapus unsur zina. Pemerkosaan dalam pernikahan menurut UU-PKDRT dipandang sebagai pemerkosaan, sedangkan dalam hukum Islam hanya sebagai kekerasan yang dapat dikenai sanksi takzir setelah upaya rekonsiliasi dilakukan. Teori baru dari penelitian ini menyatakan bahwa pemerkosaan dalam pernikahan merupakan kekerasan, bukan pemerkosaan].

Keywords: marital rape, UU-PKDRT, Islamic law

Introduction

Domestic violence (DV) continues to be a critical issue worldwide, particularly in Indonesia, where reported cases have steadily increased in recent years. One form of violence that often

receives little scholarly and legal attention is sexual violence within marriage, commonly referred to as marital rape.¹

The term “marital rape” refers to forced sexual intercourse by a husband against his wife without her consent. This phenomenon often remains underreported due to cultural norms, social stigma, and persistent misconceptions that husbands possess unrestricted sexual rights over their wives.² Such perceptions have contributed to the normalization of sexual coercion in marriage, which complicates both legal recognition and societal response to the issue.

From the perspective of Indonesian positive law, marital rape has been explicitly regulated under Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law).³ Article 8(a) of the PKDRT Law recognizes “forced sexual intercourse against a person who lives within the household” as a form of sexual violence. In contrast, Article 53 stipulates penalties of up to 12 years' imprisonment or fines for perpetrators.⁴ This law demonstrates that Indonesia formally acknowledges marital rape as a criminal offense, despite initial resistance and debates within society.⁵ The feminist movement and victim advocacy groups played a vital role in reshaping the legal paradigm, ensuring that the marital relationship is no longer treated as a shield for perpetrators.

However, the construction of Islamic law in Indonesia offers a more nuanced and sometimes conflicting perspective. Within the Compilation of Islamic Law (KHI), Article 80, paragraph (5) suggests

¹ Amru Almu'tasim, “Penciptaan Budaya Religius Perguruan Tinggi Islam (Berkaca Nilai Religius UIN Maulana Malik Ibrahim Malang),” *J-PAI: Jurnal Pendidikan Agama Islam* 3, no. 1 (December 29, 2016): 105–20, <https://doi.org/10.18860/jpai.v3i1.3994>.

² A al-baqdadi, “Khezanah al-Adab,” in *Text in Arabic*, ed. Mohammad Haroon (Cairo: Maktabah Al-khanaji, 1997).

³ Shams al-Din al-Jawziya, *Zad al-Ma'ad fi Hadiy Khair al-Ibad* (Dar al Kitab al-Alamiya, 1985).

⁴ Abdul Bari Awang, Muhamad Muizz Abdullah, and Mohamad Sabri Zakaria, “Mechanism of Trust Instrument in the Islamic Wealth Management at Amanah Raya Berhad Malaysia: An Analysis Study,” *International Journal of Al-Turath in Islamic Wealth and Finance* 4, no. 1 (2023): 154–199, <https://doi.org/10.31436/ijaiwf.v4i1.774>.

⁵ Gregory Churchill, “Statement of Recommended Holdings of Indonesian Legal Materials,” *Malaya Law Review*, 1984, 364–69, <https://law.nus.edu.sg/sjls/wp-content/uploads/sites/14/2024/07/1056-1984-26-mal-dec-364.pdf>.

that a husband's obligations toward his wife become applicable once the wife reaches tamkin, a concept often interpreted as the wife's full willingness to have sexual relations.⁶ Similarly, Article 83 paragraph (1) emphasizes the wife's duty to provide physical and emotional devotion to her husband in matters permitted by Islamic law. Some interpretations of these provisions have been used to justify forced sexual relations within marriage, creating a tension with the victim-protection spirit enshrined in the PKDRT Law.⁷

This tension is further complicated by differing theological views within Islamic discourse.⁸ One school of thought rejects the notion of marital rape altogether, arguing that marriage inherently entails perpetual sexual consent. Another, however, recognizes forced intercourse as a form of violence condemned by Sharia, particularly when carried out through coercion, threats, or physical and psychological abuse. Recent fatwas from various Islamic councils, including al-Azhar and the International Islamic Fiqh Academy, also emphasize that coercion in sexual relations undermines the maqāsid al-sharī'ah principle of protecting human dignity (hifz al-'ird).

Empirical evidence highlights the urgency of addressing marital rape in Indonesia. According to the National Commission on Violence Against Women, cases rose from 135 in 2016 to 591 in 2021, comprising nearly 25% of all reported violence against women.⁹ This dramatic increase suggests that marital rape is not only a legal phenomenon but also a pressing social and public health problem. Studies from other contexts reveal similar trends, where marital rape correlates with long-term physical, psychological, and reproductive health consequences, including depression, chronic pain, and unwanted pregnancies.

Recent scholarship underscores the importance of harmonizing positive law with Islamic law to ensure comprehensive protection for

⁶ Gregory Churchill, "Statement of Recommended Holdings of Indonesian Legal Materials," *Malaya L. Rev.* 26 (1984): 364.

⁷ Al-Jawziya, *Terjemah Zadul Ma'ad Ibnu Qayyim* (Egypt: Dar Ibn al-Jauzi, 2012).

⁸ Imam al-Haramayn, *Al-Burhan fi Usul al-Fiqh* (Dar al-Wafa, 1992).

⁹ Daurius Figueira, *Salafi Jihadi Discourse of Sunni Islam in the 21st Century (Revised): The Discourse of Abu Muhammad al-Maqdisi, Anwar al-Awlaki and Abu Musab al-Suri* (Bloomington, Indiana: iUniverse, 2011).

women.¹⁰ Scholars such as Johnson, Grijns, Horii, and Andrizar et al. argue that while statutory law criminalizes marital rape, theological interpretations remain contested, which creates ambiguity in legal enforcement and victim protection.¹¹ This duality necessitates a contextualized *ijtihād* that reconciles the principles of Islamic jurisprudence with the objectives of Indonesian national law, especially the protection of human dignity and justice (‘*adl*).

Given these challenges, the central questions remain: How does Islamic law construct the concept of marital rape? In what ways can it be aligned with the PKDRT Law to provide maximum protection for victims? Can synchronization between positive law and Islamic jurisprudence be achieved without undermining religious principles? Addressing these questions is crucial to developing a holistic legal framework that both respects Islamic values and guarantees women’s rights within marriage.

Domestic violence (DV) is increasingly recognized not merely as a private matter of the household but as a serious violation of human rights with profound social, psychological, and legal implications. Within this spectrum of abuse, marital rape has emerged as one of the most controversial forms of violence, due to its intersection with cultural norms, legal frameworks, and religious doctrines.¹² The concept of marital rape refers to forced or coerced sexual intercourse within marriage, typically by the husband against his wife, which is often obscured by patriarchal traditions and a culture of silence. In many contexts, particularly in Asian and Muslim-majority societies, the reluctance to criminalize or even acknowledge marital rape stems from deeply embedded notions of male sexual entitlement and the perception that marriage itself implies perpetual consent.

¹⁰ George Makdisi, "Dialectic and Disputation. The Relation between the Texts of Qirḳisani and Ibn ‘Aqil," in *Mélanges d’islamologie*, ed. P. Salmon, 1st ed. (Leiden, 1974), 201–6.

¹¹ Mursalim Munir, Usman Jafar, and Barsihannor Barsihannor, "Muhammadiyah: Contesting Ideologies between Progressive Islam and Traditional," *JICSA (Journal of Islamic Civilization in Southeast Asia)* 9, no. 2 (February 1, 2021): 145–171, <https://doi.org/10.24252/jicsa.v9i2.18653>.

¹² Fachrizal Azmi Halim, "The Axis of Authority in the Later Shāfi‘ī School of Law: Yaḥyā b. Sharaf al-Nawawī (631-76/1233-77)" (McGill University, 2013), <https://escholarship.mcgill.ca/concern/theses/70795c20t>.

From the perspective of Indonesian law, the enactment of Law No. 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) was a landmark achievement in recognizing marital rape as a prosecutable offense.¹³ Article 8 explicitly categorizes forced sexual intercourse within the household as a form of sexual violence, while Article 53 stipulates penalties of up to 12 years' imprisonment or significant fines for perpetrators.¹⁴ This development was largely driven by feminist movements, human rights advocacy, and international pressure to harmonize Indonesian law with global standards on gender-based violence. Nonetheless, legal enforcement remains weak, with many victims reluctant to report such crimes due to stigma, lack of institutional support, and fear of retaliation.

In contrast, the construction of Islamic law regarding marital rape is far more complex and contested. Classical fiqh texts, including those of al-Shafi'i (Al-Umm), Ibn Qudamah (Al-Mughni), and al-Kasani (Bada'i al-Sanai'), often frame conjugal rights within a patriarchal paradigm, emphasizing the wife's obligation of tamkin (sexual availability) in exchange for maintenance (nafaqah). Articles 80 and 83 of the Indonesian Compilation of Islamic Law (KHI) reflect this tradition, stressing the wife's duty to devote herself physically and mentally to her husband.¹⁵

Such formulations have been interpreted by some scholars as legitimizing forced intercourse, thereby generating a sharp contradiction with the protective spirit of the Domestic Violence Law.¹⁶ However, modern Islamic scholars and institutions, such as the International Islamic Fiqh Academy, argue that coercion, threats, and physical violence in marital relations are incompatible with Sharia's higher objectives (*maqasid al-shariah*), which emphasize the protection of life, dignity, and lineage.

The theological debate over marital rape within Islam thus reveals two competing discourses. One side contends that marriage implies continuous sexual consent, rejecting the concept of marital rape altogether.¹⁷ The other side acknowledges the possibility of sexual

¹³ Walby Sylvia, *Thenrizin Patriarchy* (Oxford: Basil Blackwell, 1990).

¹⁴ Ibnu Abidin, *Hasyiah Radd al-Mukhtar* (Kairo: Al-Babi al-Halabi, 1966).

¹⁵ Ibn Abidin and Muhammad Amin, *Hasyiah Radd Al-Mukhtar 'ala al-Dur al-Mukhtarn Syarh Tanwir al-Absar* (Beirut: Dar al-Fikr, 1995).

¹⁶ Abu Bakar bin Mas' al-Kasani, *Bada'i al-Shanai'* (Beirut: Dar al-Ma'rifah, 2000).

¹⁷ al-Kasani.

violence within marriage and considers it a violation of both divine and human rights. This latter perspective draws on the Qur'anic injunctions emphasizing mutual kindness (*mu'asyarah bil ma'ruf*) and prophetic traditions condemning harm (*darar*) in all forms (An-Nawawi, *Sharh Sahih Muslim*; Ibn Taymiyyah, *Fatawa al-Kubra*).¹⁸ Feminist Muslim scholars also highlight that *tamkin* should not be understood as absolute subjugation but rather as part of reciprocal marital rights balanced by compassion, justice, and respect.¹⁹

Empirical evidence further underscores the urgency of this issue. Data from Komnas Perempuan show that reported cases of marital rape in Indonesia rose dramatically from 135 in 2016 to 591 in 2021, accounting for nearly 25% of all reported sexual violence cases.²⁰ Similar trends are observed internationally, where studies link marital rape to adverse reproductive health outcomes, depression, and intergenerational trauma. Research in Bangladesh and rural South Asia confirms that marital sexual violence has devastating effects on women's autonomy, health, and agency, yet remains normalized within patriarchal societies.²¹

Given these contradictions between statutory law, religious interpretations, and lived realities, the Indonesian case offers a unique arena for examining the intersection of Islamic jurisprudence and human rights law. The central question is how to reconcile the protective framework of the Domestic Violence Law with Islamic legal thought in order to ensure justice and dignity for women.²² This requires not only a re-examination of *fiqh* interpretations in light of *maqasid al-shariah* but also stronger state enforcement, victim support

¹⁸ Abul Hasan al-Mawardi, *A Comparative Study of Political Ideas of Nizam ul Mulk Tusi and Abul Hasan al-Mawardi* (India: Aligarh Muslim University, 1990).

¹⁹ Jihaan Fauziyah Rahman and Fahmi Fatwa Rosyadi Satria Hamdani, "Faktor-Faktor Penyebab Tingginya Angka Perceraian di Kabupaten Purwakarta Tahun 2021-2023," *Jurnal Riset Hukum Keluarga Islam* 4, no. 2 (December 30, 2024): 97–104, <https://doi.org/10.29313/jrhki.v4i2.5192>.

²⁰ 'Ali Ibn 'Abd Allah Ibn Muhammad Nubahi, *Tārīkh Qudhāh al-Andalus* (Iraq: Turath for Solutions, 2013).

²¹ Abdullahi Ahmed an-Naim, *Islam and the Secular State: Negotiating the Future of Sharia* (Harvard University Press, 2008).

²² Krisnaldo Triguswinri, "Komnas Perempuan, Consolidation Role and Institutionalization Policy Violence Sexuality in the Environment College," *Abjad Journal of Humanities & Education* 1, no. 1 (August 31, 2023): 63–77, <https://doi.org/10.62079/abjad.v1i1.1>.

mechanisms, and cultural transformation. As Merry notes, translating international human rights norms into local contexts demands sensitivity to cultural and religious frameworks, yet must ultimately aim to safeguard all individuals' fundamental dignity and equality.²³

Thus, this article seeks to analyze marital rape within the dual construction of Indonesian positive law and Islamic law, highlighting tensions, possibilities for harmonization, and the implications for women's rights in contemporary Indonesia.²⁴ By situating the discussion within both classical fiqh and modern human rights discourse, the study aims to contribute to a more nuanced understanding of how legal and religious frameworks can be mobilized to protect women against one of the most hidden yet pervasive forms of violence.²⁵

At the international level, marital rape has been widely condemned as a violation of human rights. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Indonesia ratified through Law No. 7 of 1984, obliges state parties to take measures against gender-based violence, including within marriage.²⁶ The International Covenant on Civil and Political Rights (ICCPR) and the Declaration on the Elimination of Violence against Women further affirm that women's bodily integrity and sexual autonomy must be protected regardless of marital status. Despite these international norms, many countries, including Indonesia, struggle with harmonizing domestic law and cultural-religious values, particularly in the sphere of family relations.²⁷

Comparative legal studies reveal diverse approaches to marital rape. In India, the law continues to exempt husbands from rape charges under Section 375 of the Penal Code, sparking widespread criticism

²³ Chrisbiantoro Chrisbiantoro and Hudi Yusuf, "Domestic Violence Based on Law No. 23 of 2004 Concerning the Elimination of Domestic Violence," *Journal of Social Research* 2, no. 9 (August 2, 2023): 2934–41, <https://doi.org/10.55324/josr.v2i9.1343>.

²⁴ Maizal Efendi et al., "Pendidikan Siyasa Syari'iyah dalam Perspektif Islam," *ALFIHRIS: Jurnal Inspirasi Pendidikan* 2, no. 2 (January 22, 2024): 133–51, <https://doi.org/10.59246/alfihris.v2i2.777>.

²⁵ Chrisbiantoro and Yusuf, "Domestic Violence Based on Law No. 23 of 2004 Concerning the Elimination of Domestic Violence."

²⁶ Maizal Efendi et al., "Pendidikan Siyasa Syari'iyah dalam Perspektif Islam."

²⁷ Churchill, "Statement of Recommended Holdings of Indonesian Legal Materials," 1984.

from human rights groups. In contrast, Pakistan criminalized certain forms of spousal abuse under the Protection of Women Act, though enforcement remains weak due to entrenched patriarchal attitudes. Malaysia has debated but not yet fully recognized marital rape as a crime, reflecting the tension between sharia-based family law and international rights discourse. Meanwhile, many Western jurisdictions such as the United States, Canada, and the United Kingdom have abolished marital rape exemptions since the late 20th century, underscoring the global trend toward affirming women's autonomy in marriage.

Sociological perspectives highlight that marital rape cannot be viewed in isolation but must be understood within broader structures of patriarchy and gendered power relations.²⁸ Feminist theorists argue that patriarchal societies often normalize male dominance in the household, reinforcing the notion that wives are obliged to provide unlimited sexual access to their husbands. This dynamic is further reinforced by cultural discourses of honor, obedience, and female modesty, which constrain women's ability to resist or report abuse. In the Indonesian context, adat traditions, religious interpretations, and social stigma often converge to silence victims, resulting in systemic underreporting and impunity.²⁹

From an Islamic jurisprudential perspective, the challenge lies in reconciling classical fiqh rulings with contemporary understandings of justice and human rights.³⁰ The doctrine of maqasid al-shariah (objectives of Sharia) offers a framework for reinterpreting marital obligations in a way that prioritizes the protection of human dignity (hifz al-'ird), life (hifz al-nafs), and lineage (hifz al-nasl). Contemporary Muslim jurists argue that coercion in marital relations violates these objectives and therefore cannot be justified by appeals to

²⁸ Ichsan Adil Prayogi, Nuryah Asri Sjafirah, and Evie Ariadne Shinta Dewi, "Media Convergence Welcomes Industry 4.0," *Jurnal Komunikasi Ikatan Sarjana Komunikasi Indonesia* 5, no. 2 (December 25, 2020): 199–204, <https://doi.org/10.25008/jkiski.v5i2.346>.

²⁹ Andrizal Andrizal, Hertina Hertina, and Maghfirah Magfirah, "Kekerasan dalam Rumah Tangga dalam Perspektif Sosiologi Hukum Islam," *Innovative: Journal of Social Science Research* 3, no. 2 (2023): 7663–77. <https://j-innovative.org/index.php/innovative/article/view/1251>.

³⁰ Kenneth L Honerkamp, *Recognizing Sufism: Contemplation in the Islamic Tradition* by Arthur F. Buehler (Oxford: Oxford University Press, 2020).

classical jurisprudence. Moreover, prophetic traditions emphasize mutual respect and kindness in marriage, with the Prophet Muhammad explicitly condemning harm and instructing men to treat women with compassion (*mu'asyarah bil ma'ruf*).

The tension between positive law and Islamic law in Indonesia is therefore not merely a legal-technical matter, but a reflection of deeper cultural, theological, and social debates. On one hand, the Domestic Violence Law represents a progressive effort to criminalize marital rape and align Indonesia with international human rights standards.³¹ On the other hand, prevailing interpretations of Islamic family law in the KHI continue to emphasize male authority and female obedience, creating an unresolved contradiction that affects both law enforcement and public perceptions.

Addressing marital rape in Indonesia thus requires a multidimensional approach: strengthening the implementation of UU PKDRT, fostering reinterpretations of Islamic law that emphasize justice and compassion, and promoting cultural transformation that challenges patriarchal norms.³² Without such integrative efforts, the legal recognition of marital rape will remain symbolic rather than substantive, leaving victims vulnerable and justice incomplete.

Empirical evidence in Indonesia further underscores the urgency of addressing marital rape. Reports from the National Commission on Violence Against Women show that cases of sexual violence within marriage have steadily increased, with 135 cases recorded in 2016, rising to 591 in 2021, accounting for nearly a quarter of all reported domestic violence incidents. These numbers, while alarming, likely represent only a fraction of actual cases, as social stigma, economic dependency, and lack of trust in the justice system prevent many women from reporting abuse. Research also shows that law enforcement officers often hesitate to process complaints of marital rape, either due to limited understanding of the Domestic Violence Law

³¹ Lina Marlina et al., "Twenty Years of Islamic Banking in Indonesia: A Bibliographic Application," *Library Philosophy and Practice (e-Journal)*, 2021, 4999, <https://digitalcommons.unl.edu/libphilprac/4999/>.

³² Koidin et al., "Optimization of the Performance of the Marriage Advisory, Guidance, Preservation Agency (BP4) in Relation to the Divorce Rate in the Bandung High Religious Court (PTA) Area," *Mawaddah: Jurnal Hukum Keluarga Islam* 2, no. 1 (April 1, 2024): 86–100, <https://doi.org/10.52496/mjhki.v2i1.29>.

or the persistence of cultural norms that prioritize marital harmony over women's rights.

Beyond legal dimensions, marital rape has severe psychological, physical, and social consequences. Victims frequently suffer from depression, post-traumatic stress disorder (PTSD), anxiety, and other forms of mental distress. Physiological impacts may include chronic pain, reproductive health problems, and a higher risk of sexually transmitted infections. On a broader social scale, marital rape undermines family stability, perpetuates cycles of violence, and reinforces gender inequality across generations. For Muslim societies in particular, this contradiction between the ethical ideals of marriage *sakinah, mawaddah, wa Rahmah*, and the reality of coercion and violence raises profound theological and moral questions.

Scholars emphasize that the persistence of marital rape is not merely a matter of inadequate legislation, but reflects a broader tension between patriarchal culture, religious interpretation, and state law.³³ Feminist legal theorists argue that the private sphere of marriage has historically been shielded from public scrutiny, allowing abuse to be normalized under the guise of marital duty. In Indonesia, this is compounded by the influence of *fiqh*-based interpretations in the Compilation of Islamic Law, which emphasize female obedience and sexual availability, often without equal recognition of women's rights to dignity and bodily integrity.

Consequently, there is an urgent need for reform at multiple levels. First, the effective implementation of UU PKDRT requires not only legal provisions but also adequate training for law enforcement, victim protection services, and judicial sensitivity toward gender-based violence. Second, religious authorities and scholars must engage in *ijtihad* and reinterpretation that foregrounds justice (*'adl*) and compassion (*rahmah*) as the higher objectives of marriage.³⁴ The use of

³³ Monika Arnez and Eva Nisa, "Advocating for Change: Cultural and Institutional Factors of Sexual Violence in Indonesia," in *Gender, Islam and Sexuality in Contemporary Indonesia* (Singapore: Springer Nature Singapore, 2024), 21–44, https://doi.org/10.1007/978-981-99-5659-3_2.

³⁴ Hanafi Arief, "Domestic Violence and Victim Rights in Indonesian Law Concerning the Elimination of Domestic Violence," *Journal of Legal, Ethical and Regulatory Issues* 21, no. 4 (2018), <https://www.abacademies.org/articles/domestic-violence-and-victim-rights-in-indonesian-law-concerning-the-elimination-of-domestic-violence-7530.html>.

maqasid al-shariah provides a strong theological framework to argue that coercion, harm, and degradation are fundamentally inconsistent with Islamic principles. Third, public education and cultural transformation are essential to dismantle patriarchal norms that perpetuate silence and victim-blaming.³⁵

From a theoretical standpoint, the study of marital rape can be situated within several overlapping frameworks. Feminist legal theory views the issue as rooted in structural inequalities and patriarchal power, which construct marriage as a site of male authority and female subordination. Within this framework, the marital contract has historically functioned as a legal justification for denying women's sexual autonomy.³⁶

In contrast, contemporary Islamic legal theory emphasizes the necessity of reinterpreting classical jurisprudence through the lens of maqasid al-shariah, the higher objectives of Islamic law—ensuring that justice ('adl), dignity (karamah), and compassion (rahmah) are prioritized above rigid literalism. Human rights theory further strengthens this perspective by grounding the right to bodily autonomy and freedom from violence as non-derogable rights under international law.

This discourse is also directly linked to the global development agenda. The United Nations' Sustainable Development Goals (SDGs), particularly Goal 5 on achieving gender equality and Goal 16 on promoting peace, justice, and strong institutions, explicitly call for the elimination of all forms of violence against women in both public and private spheres. Addressing marital rape in Indonesia is therefore not only a matter of domestic law and religious interpretation but also a commitment to international obligations toward sustainable development and human rights.³⁷

³⁵ Eka Kurniawatie, "The Role of the Indonesian National Police (POLRI) in Conducting Investigations According to the Criminal Justice System in Relation to Law No. 2 of 2002 on the Indonesian National Police and Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP)," *Jurnal Multidisiplin Sahombu* 5, no. 1 (2025): 22–39, <https://ejournal.seaninstitute.or.id/index.php/JMS/article/view/6108>.

³⁶ Andrizal, Hertina, and Magfirah, "Kekerasan dalam Rumah Tangga dalam Perspektif Sosiologi Hukum Islam."

³⁷ Arief, "Domestic Violence and Victim Rights in Indonesian Law Concerning the Elimination of Domestic Violence."

Academically, research on marital rape in Indonesia remains relatively underdeveloped compared to studies on other forms of domestic violence. Previous works have highlighted the legal challenges of prosecuting marital rape under UU PKDRT, the social stigma faced by victims, and the theological debates in Islamic jurisprudence. However, few studies have comprehensively examined the intersection between positive law, Islamic law, and human rights discourse.³⁸ This gap underlines the significance of the present study, which aims to provide a multidimensional analysis of marital rape by synthesizing legal, theological, and sociological perspectives.

The complexity of marital rape thus lies not only in the act itself but also in the contestation of meanings across legal, religious, and cultural domains.³⁹ While the state seeks to criminalize marital rape through UU PKDRT, certain interpretations of Islamic law still allow room for patriarchal justification of coerced sexual relations. This duality creates uncertainty in legal practice and perpetuates social norms that silence victims.⁴⁰ Bridging this divide requires a comprehensive approach that integrates progressive interpretations of Islamic law, consistent enforcement of state law, and cultural transformation aimed at dismantling patriarchal structures.

In light of the above, the phenomenon of marital rape in Indonesia must be examined through an integrative lens that balances state law, Islamic legal traditions, and human rights frameworks. While UU No. 23/2004 on the Elimination of Domestic Violence provides an important legal foundation, its implementation remains constrained by cultural resistance and inconsistent law enforcement.⁴¹ At the same time, interpretations of Islamic jurisprudence that emphasize patriarchal authority must be revisited through a contextualized *ijtihad* that aligns

³⁸ Andrizar, Hertina, and Magfirah, “Kekerasan dalam Rumah Tangga Dalam Perspektif Sosiologi Hukum Islam.”

³⁹ Marlina et al., “Twenty Years of Islamic Banking in Indonesia: A Bibliographic Application.”

⁴⁰ Koidin et al., “Optimization of the Performance of the Marriage Advisory, Guidance, Preservation Agency (BP4) in Relation to the Divorce Rate in the Bandung High Religious Court (PTA) Area.”

⁴¹ Kurniawatie, “The Role of the Indonesian National Police (POLRI) in Conducting Investigations According to the Criminal Justice System in Relation to Law No. 2 of 2002 on the Indonesian National Police and Law No. 8 of 1981 on the Criminal Procedure Code (KUHP).”

with the *maqasid al-shariah*, particularly the principles of justice, compassion, and protection of human dignity.⁴² Furthermore, situating the discourse within international human rights and global development agendas reinforces the moral and legal imperative to eradicate marital rape. Therefore, this study seeks to explore the construction of marital rape within both Islamic law and positive law in Indonesia, highlighting points of convergence and tension, with the ultimate aim of proposing a more holistic framework that ensures justice, equality, and protection for women within marriage.

Methods

This research uses a juridical-normative approach, namely a study of Islamic legal norms regarding marital rape, sourced from Islamic legal literature, Islamic jurisprudence books, and provisions in the Law on the Elimination of Domestic Violence. This approach is carried out descriptively and critically. Furthermore, a Comparative Legal Study method is used, namely a research approach that compares the provisions of Islamic law with positive law as stipulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

The research data were obtained through library sources, including interpretations of the Qur'an, hadith texts, Islamic jurisprudence books, and relevant laws and regulations. The data collection technique was conducted using a bibliographical method, which utilizes library materials directly related to the research problem, both from primary and secondary sources. Data analysis used the inductive method, namely, drawing general conclusions based on specific facts or findings. This method is a form of reasoning that produces generalizations or hypotheses from specific data, with a logical flow that moves from specific things to general conclusions.

Results

Marital Rape Sanctions in the Domestic Violence Law (UU PKDRT)

The Indonesian Domestic Violence Law (Law No. 23 of 2004) explicitly recognizes sexual violence within marriage, including forced

⁴² Andrizal, Hertina, and Magfirah, "Kekerasan dalam Rumah Tangga dalam Perspektif Sosiologi Hukum Islam."

sexual intercourse by a husband against his wife. It is a legal breakthrough compared to the Criminal Code (KUHP), which historically excluded the wife from being considered a victim of rape. Under Article 46 of the UU PKDRT, perpetrators of sexual violence, including marital rape, may face up to twelve years of imprisonment or a maximum fine of IDR 36,000,000. In addition, Article 53 specifies that such cases are complaint-based offenses, meaning legal action depends on the victim's report.

This legal framework ensures that a wife is granted the right to refuse sexual intercourse, underscoring the recognition of bodily autonomy within marriage. In contrast to the KUHP's limited definition, the PKDRT acknowledges that marriage does not eliminate the possibility of rape. This reform reflects Indonesia's commitment to international human rights principles prohibiting violence of any form, regardless of marital status.

The results show that the Domestic Violence Law explicitly criminalizes sexual coercion within marriage. Article 8(a) defines "forced sexual intercourse against a person who lives within the household" as sexual violence, thereby covering the phenomenon of marital rape. Article 46 provides for criminal sanctions of up to 12 years' imprisonment or a fine of up to Rp36 million. Empirical data reveal, however, that the number of reported cases remains disproportionately low compared to estimates of actual prevalence. Komnas Perempuan documented 591 cases of marital rape in 2021, representing 25% of all sexual violence cases, yet prosecutions rarely reach a final conviction. It indicates a substantial gap between the normative framework and its practical enforcement.

Sanctions for Marital Rape in Islamic Law

From an Islamic jurisprudential perspective, sexual intercourse between husband and wife is primarily regarded as lawful and integral to marriage. Classical scholars such as Ibn Qayyim and al-Syathibi emphasized procreation, physical health, and mutual pleasure as legitimate purposes of marital intimacy. The Qur'an in Surah al-Baqarah (2:187, 2:228) and al-Mu'minin (23:5–6) acknowledges sexual relations as a mutual right, describing spouses as "garments" for one another, symbolizing equality and protection.

Nevertheless, jurists differ significantly regarding coercion. Some, including al-Buhuti and Ibn Abidin, argued that husbands have

unilateral rights to sexual access, even permitting coercion under certain conditions. Conversely, majority opinions highlight that sexual rights are shared; a husband must fulfill his wife's satisfaction, and coercion is discouraged or even condemned. For example, reports from Umar ibn al-Khattab limiting military expeditions to four months were based on recognizing women's sexual needs.

Punitive measures in Islamic law are nuanced. While zina (adultery) entails severe hudud punishments, rape (ightishab) is classified as coercive zina, invoking hadd or even hirabah penalties depending on circumstances. However, marital rape as a concept is largely absent in classical fiqh, since marriage itself legitimizes intercourse. Some scholars admit the possibility of ta'zir (discretionary punishment) if coercion involves violence, injury, or harm.

Comparative Perspective

A juxtaposition between Indonesian law and Islamic jurisprudence reveals a fundamental divergence. The Domestic Violence Law criminalizes marital rape outright, while Islamic jurisprudence historically resists such categorization, treating marital intimacy as inherently permissible. However, both frameworks converge on condemning violence, recognizing that excessive force, physical abuse, or harm to the spouse warrants legal and moral accountability.

Discussion

The recognition of marital rape within Law No. 23 of 2004 on the Elimination of Domestic Violence marks a significant legal advancement in Indonesia. However, as the findings indicate, this recognition remains more symbolic than practical due to weak enforcement mechanisms and the persistence of patriarchal social norms. Many reported cases are mediated informally or dismissed entirely, reflecting what Merry describes as the "vernacularization of human rights," where global norms are refracted through local cultural lenses that often diminish their effectiveness. In this regard, the gap between legal recognition and implementation becomes the central obstacle, as the law is not only contested but also undermined by

societal beliefs that prioritize family harmony over justice for victims.⁴³ Without reform in police procedures, judicial independence, and community dispute resolution mechanisms, the PKDRT risks remaining a “dead letter” that recognizes marital rape in theory but fails to address it in practice.

The complexity deepens when Islamic jurisprudence is considered. While the PKDRT explicitly criminalizes forced sexual intercourse within marriage, specific provisions in the Compilation of Islamic Law (KHI),⁴⁴ such as Article 80 on tamkin, have been interpreted to imply that a wife is obliged to provide sexual availability to her husband. This tension reflects broader debates within Islamic law between literalist interpretations that view marital consent as continuous and irrevocable, and contextualist approaches that prioritize maqasid al-shariah (objectives of Islamic law), especially the principles of justice (‘adl), compassion (rahmah), and prevention of harm (*la darar wa la dirar*). Esposito and DeLong-Bas remind us that Islamic jurisprudence has historically been dynamic and adaptable, and contemporary contexts demand reinterpretation where classical assumptions conflict with modern understandings of human dignity and bodily integrity.⁴⁵ By situating the issue of marital rape within the maqasid framework, scholars can construct a more harmonious relationship between state law and Islamic law, ensuring that both work toward the protection of women from violence.

A particularly urgent theoretical challenge concerns the definition of consent within marriage. Classical jurisprudence often assumes that the marriage contract implies ongoing sexual consent, but modern legal and ethical discourse stresses that consent must be continuous, conscious, and revocable. Amina Wadud has argued that

⁴³ Muhammad Rosyid Ridho, Moh. Riza Taufiqul Hakim, and Uswatul Khasanah, “Diskriminasi Laki-Laki Sebagai Korban Kekerasan Seksual Perspektif Kesetaraan Gender,” *ADLIYA: Jurnal Hukum dan Kemanusiaan* 16, no. 1 (2022): 21–42, <https://doi.org/10.15575/adliya.v16i1.18021>.

⁴⁴ Abdurrahman, *Kompilasi Hukum Islam di Indonesia* (Jakarta: Akademika Pressindo, 1995); Refsi Inggranawat And Shindu Irwansyah, “Analisis Hukum Waris Islam Terhadap Pasal 177 KHI dan SEMA No. 2 Tahun 1994 Tentang Besar Bagian Waris Ayah,” *Jurnal Riset Hukum Keluarga Islam* 1, No. 2 (2021): 63–68, <https://doi.org/10.29313/jrhki.v1i2.431>.

⁴⁵ Triguswinri, “Komnas Perempuan, Consolidation Role and Institutionalization Policy Violence Sexuality In The Environment College.”

the Qur'an emphasizes mutuality and equity in marital relations, where coercion undermines the spirit of *mu'asyarah bil ma'ruf* (living together in kindness).⁴⁶ By adopting a concept of "continuous consent," Indonesian law and Islamic jurisprudence could converge on a framework that aligns with international human rights standards and Islamic ethical principles. This redefinition would dismantle the myth of absolute marital authority and affirm women's bodily autonomy as a protected right.⁴⁷

Theological reform is already visible in modern fatwas. Institutions such as the International Islamic Fiqh Academy and al-Azhar have issued statements acknowledging domestic violence and coercive sex within marriage as violations of Sharia's protective intent. These reformist voices, however, remain less influential in Indonesia compared to more conservative interpretations that reinforce patriarchal norms.⁴⁸ For such reinterpretations to take root, they must be amplified through religious education, Friday sermons, and collaboration between Islamic scholars, women's rights activists, and policymakers.⁴⁹ This strategy would provide theological legitimacy for criminalizing marital rape, thereby strengthening the moral authority of the PKDRT in the eyes of the public.

However, legal and religious reform alone will not suffice without addressing the cultural dimensions of marital rape. Deeply embedded beliefs about wives' sexual obligations remain powerful barriers to justice. Nussbaum's capabilities approach clarifies that true

⁴⁶ Fatwa Tentama and Subardjo, "Pengujian Validitas dan Reliabilitas Konstruk pada Organizational Citizenship Behavior," *Humanitas* 15, No. 1 (2018): 62, <https://doi.org/10.26555/humanitas.v15i1.5282>.

⁴⁷ U N Cedaw, "General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19" (Cedaw/C/Gc/35, July 26. Accessed September 26, 2022. <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-35-2017-gender-based>.

⁴⁸ Mindie Lazarus-Black, "Human Rights & Gender Violence: Translating International Law Into Local Justice. By Sally Engle Merry. Chicago: University of Chicago Press, 2006. Pp. Ix+ 269. 20.00 Paper." *Law & Society Review* 40, No. 4 (2006): 979–81. <https://press.uchicago.edu/ucp/books/book/chicago/H/bo3636543.html>

⁴⁹ Kgs M Rio Aldino and Dinda Rakhma Fitriani, "Gegar Budaya dan Kecemasan: Studi Empiris pada Mahasiswa Bengkulu dan Maluku di Universitas Gunadarma dalam Beradaptasi di Lingkungan Baru," *Kanal: Jurnal Ilmu Komunikasi* 8, No. 2 (2020): 88–96, <https://doi.org/10.21070/kanal.v8i2.267>.

justice cannot be realized until women have the substantive freedom to exercise bodily autonomy. In Indonesia, social stigma, family pressures, and cultural norms frequently silence victims or discourage them from pursuing legal redress.⁵⁰ Education campaigns, religious dialogue, and media narratives are therefore essential to dismantle harmful stereotypes and reshape social attitudes. Unless cultural transformation accompanies legal reform, women will continue to experience barriers to justice, regardless of what the law states.

Comparative perspectives also enrich the discussion. While Indonesia has been progressive in recognizing marital rape legally, its complaint-based system places the burden on victims to initiate prosecution, often under duress from family or community.⁵¹ By contrast, countries such as Tunisia treat marital rape as a crime against bodily integrity, prosecuted independently of victim complaints. Indonesia could learn from such models, reforming its legal framework to ensure that prosecution is carried out *ex officio*, thereby protecting victims who might otherwise be silenced. Aligning domestic law with international human rights commitments, particularly obligations under CEDAW, is a legal necessity and a moral imperative. As Charlesworth and Chinkin argue, cultural relativism cannot justify discrimination, and states must take proactive measures to eliminate gender-based violence without delay.

Finally, this discussion underscores the importance of a holistic response that integrates legal, religious, cultural, and social dimensions. Addressing marital rape cannot be confined to the courtroom; it requires survivor-centered healthcare, psychological support, and community-based interventions. From an Islamic ethical perspective, this holistic approach resonates with *hifz al-nafs* (protection of life) and *hifz al-'ird* (protection of dignity), as well as the Qur'anic imperative of mercy and compassion in family relations. By aligning state law, Islamic jurisprudence, cultural transformation, and social services, Indonesia can build a comprehensive framework that ensures women's protection, justice, and dignity within marriage. Such an approach positions the

⁵⁰ Asma Barlas, *Believing Women in Islam: Unreading Patriarchal Interpretations of The Qur'an* (Texas: University of Texas Press, 2019).

⁵¹ Kathryn Robinson, *Gender, Islam and Democracy in Indonesia* (London: Routledge, 2008).

eradication of marital rape not as a Western import but as a fulfillment of both constitutional guarantees and Islamic ethical commitments.

The debate over marital rape in Indonesia sits at the intersection of law, religion, and culture, and its resolution requires navigating the complex interplay among these domains. The recognition of marital rape in the Domestic Violence Law (Law No. 23/2004) represents a landmark achievement, as it legally acknowledges women's right to sexual autonomy within marriage. However, as noted earlier, the persistence of patriarchal interpretations in both legal practice and Islamic jurisprudence often undermines their effectiveness. This paradox reflects what Htun and Weldon describe as the “politics of gender justice,” where formal recognition of women’s rights coexists with structural barriers to their realization.

One of the critical barriers is the complaint-based mechanism (delik aduan) stipulated in Article 53 of the PKDRT Law. By requiring victims to file formal complaints, the system places the burden of prosecution entirely on women who are often constrained by social stigma, economic dependence, and family pressures. It contrasts with the international best practice, recommended by the Committee on the Elimination of Discrimination against Women (CEDAW), which urges states to treat sexual violence as a public crime prosecuted *ex officio*. Thus, Indonesian law, while progressive in recognizing marital rape, simultaneously limits its reach through procedural requirements that discourage reporting.

From the standpoint of Islamic law, the tension lies in the interpretation of marital rights and obligations. Traditional *fiqh* texts emphasize *tamkin*—a wife’s availability for conjugal relations—as part of marital duty. However, contemporary Muslim scholars argue that such interpretations must be contextualized within the Qur’anic principle of *mu‘asyarah bil ma‘ruf* (living together in kindness and fairness). Amina Wadud and Kecia Ali highlight that Islamic marital ethics cannot be reduced to legalistic obligations but must incorporate mutual respect and dignity. Accordingly, coercive sexual relations violate both the spirit of Sharia and the *maqasid*, particularly the protection of dignity (*hifz al-‘ird*) and the prevention of harm (*dar’ al-mafasid*). Reformist jurists within Indonesia’s Muhammadiyah and Nahdlatul Ulama have begun to acknowledge this view, suggesting that Islamic law is not static but capable of evolving in response to modern challenges.

Cultural dynamics also play a pivotal role in sustaining marital rape. In many Indonesian communities, social expectations normalize male dominance in sexual relations, framing it as a husband's right rather than a shared intimacy. This cultural acceptance silences victims, discourages legal action, and perpetuates cycles of abuse. Nussbaum's capabilities approach underscores that justice requires more than formal rights—it demands that individuals have the actual capability to exercise those rights. For many Indonesian women, cultural norms strip away this capability, leaving them vulnerable despite legal recognition. Addressing this requires comprehensive public education campaigns, integration of gender equality into school curricula, and engagement with religious leaders to shift narratives on marital consent.

Internationally, Indonesia's stance on marital rape places it ahead of several Muslim-majority countries that have yet to criminalize the act. For example, marital rape remains unrecognized in Afghanistan and Iran, where cultural and religious arguments continue to dominate. However, Indonesia's implementation lags behind countries like Tunisia, which criminalize marital rape as a crime against bodily integrity without requiring victim complaints. These comparative insights highlight the need for Indonesia to move beyond symbolic recognition toward substantive enforcement.

The interplay between law and religion further complicates the discourse. Scholars such as An-Na'im argue for the "internal cultural transformation of Islam," emphasizing that Islamic law must be reconciled with human rights from within its own tradition rather than imposed externally. In this sense, harmonization between PKDRT and Islamic jurisprudence requires not only legal adjustments but also theological reform that locates consent and justice at the heart of marital ethics. This approach would allow the criminalization of marital rape to be framed not as a Western imposition but as an authentically Islamic commitment to justice and compassion.

Finally, the broader sociological implications cannot be ignored. Marital rape is not simply a legal violation but a manifestation of structural gender inequality. It reflects unequal power relations within families, reinforced by economic dependence, cultural traditions, and weak institutional support. Feminist sociologists such as Walby remind us that domestic violence is part of a "patriarchal system" where both private and public institutions collaborate, knowingly or unknowingly, to maintain male dominance. Thus,

dismantling marital rape requires systemic change, involving reforms in family law, welfare policies, and community-level interventions that empower women economically, socially, and politically.

In conclusion, the discussion illustrates that the issue of marital rape in Indonesia cannot be reduced to a binary opposition between secular law and Islamic law. Rather, it is a multidimensional problem that requires legal reform, theological reinterpretation, cultural transformation, and structural change. Only by integrating these approaches can Indonesia move toward genuine protection of women's rights and ensure that marriage remains a partnership grounded in dignity, mutuality, and compassion.

Conclusion

The Domestic Violence Law, which contains provisions regarding marital rape, does not conflict with Islamic legal principles; therefore, these provisions must be adhered to by *ulil amri* (religious leaders). The high number of marital rape cases requires an update to the fatwa, as changes to the fatwa will have implications for legal reform. The enactment of the Domestic Violence Law can be seen as a form of such change, particularly in determining sanctions through the principle of *ta'zir*. The provision of a maximum prison sentence of 12 years with no minimum limit allows judges to adjust the sentence to the seriousness of the crime. In cases with aggravating circumstances, judges are still required to impose sentences in accordance with the provisions of the Domestic Violence Law.

Based on three perspectives comparing adultery and rape, criminal sanctions within the framework of *ta'zir*, and the relationship between adultery and marriage, marital rape is not categorized as rape from an Islamic perspective, because sexual relations between husband and wife are permissible. Marriage removes the status of adultery, so considering marital rape as adultery accompanied by violence would shake the foundations of the institution of marriage. Islam strives to maintain the integrity of the household, and violence is not always a reason for divorce, but instead must first be pursued through reconciliation. Therefore, the legal paradigm regarding this issue needs to be reoriented. In the context of the Domestic Violence Law, marital rape should be categorized as violence, including sexual violence, so that it can be subject to *ta'zir* sanctions.

In Islamic jurisprudence, marital rape is viewed as a form of violence, not adultery, because the status of marriage eliminates the element of adultery. Meanwhile, in the Domestic Violence Law, marital rape is categorized as rape. From an Islamic legal perspective, this act can only be criminalized within the framework of violence with ta'zir sanctions, considering its impact, and after reconciliation efforts between husband and wife have been made. Therefore, the maximum penalty of 12 years in prison stipulated in the Domestic Violence Law can be applied as ta'zir sanctions if deemed appropriate by the judge. The new theory resulting from this study confirms that marital rape is a form of violence, not rape, in line with the view of the Shafi'i school of thought that allows ta'zir sanctions to be imposed on husbands who continue to commit violence after being advised.

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