



CLOSING THE GAP: ADDRESSING MARITAL RAPE WITHIN THE FRAMEWORK OF ISLAMIC CRIMINAL LAW IN INDONESIA

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Abstract: Marital rape remains an underexplored issue in both Islamic legal scholarship and national legal practice in Indonesia. Deeply rooted cultural norms often frame sexual relations within marriage as the wife's unquestionable duty, thereby obscuring the coercive and violent dimensions of forced intimacy. This study analyzes marital rape through the lens of Islamic criminal law and its intersections with Indonesian national law. Employing a normative juridical method based on library research, the study examines Qur'anic injunctions, *fiqh jināyah* literature, and Law No. 23 of 2004 on the Elimination of Domestic Violence. Findings reveal that marital rape is not classified as *zinā* (adultery) but falls under *jarīmah ta'zīr* (discretionary crimes) and may incur *qisās* or *diyāt* when accompanied by physical harm. The principles of *mu'āsharah bi al-ma'rūf* and *maqāsid al-sharī'ah* underscore that sexual coercion violates Sharia's objectives of safeguarding life, dignity, and family harmony. Consequently, this study emphasizes the urgent need for legal reform, regulatory harmonization, and religious engagement to ensure comprehensive victim protection.

Keywords: Islamic Criminal Law; Marital Rape; *Jarīmah Ta'zīr*; Domestic Violence

Abstrak: Pemerkosaan dalam perkawinan (*marital rape*) masih menjadi isu yang kurang mendapat perhatian, baik dalam wacana hukum Islam maupun praktik hukum nasional di Indonesia. Norma budaya yang memandang hubungan seksual sebagai kewajiban mutlak istri sering kali menutupi dimensi paksaan dan kekerasan di baliknya. Artikel ini menganalisis *marital rape* dari perspektif hukum pidana Islam dan relevansinya dengan hukum nasional. Dengan menggunakan metode yuridis normatif melalui studi kepustakaan, penelitian ini mengkaji dalil al-Qur'an, literatur fikih *jināyah*, serta Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan dalam Rumah Tangga. Temuan menunjukkan bahwa *marital rape* tidak termasuk kategori zina, melainkan masuk dalam *jarīmah ta'zīr* (jarimah dengan sanksi diskresioner), dan dapat dikenakan *qisās* atau *diyāt* apabila disertai kekerasan fisik. Prinsip *mu'āsharah bi al-ma'rūf* serta *maqāsid al-sharī'ah* menegaskan bahwa pemaksaan seksual dalam perkawinan bertentangan dengan tujuan syariat dalam menjaga jiwa, kehormatan, dan martabat manusia. Karena itu, reformulasi hukum Islam dan hukum nasional diperlukan untuk memberikan perlindungan komprehensif bagi korban marital rape.

Kata Kunci: Hukum Pidana Islam; *Marital rape*; *Jarīmah Ta'zīr*; Kekerasan dalam Rumah Tangga

A. INTRODUCTION

Contemporary discussions on women's rights and domestic violence increasingly address the issue of marital rape.¹ Within the framework of international law and human rights discourse, marital rape is regarded as a severe form of violation of women's bodily integrity.² However, in many Muslim societies, including Indonesia, this issue remains controversial. Cultural norms that regard sexual relations as the husband's "right" often disregard the wife's consent, resulting in intimate relations within marriage being considered legitimate without regard to voluntary agreement.³ This issue becomes even more significant in the Indonesian context, as although Law No. 23 of 2004 on the Elimination of Domestic Violence explicitly criminalizes the coercion of sexual relations within the household, religious discourse still shows differing viewpoints. The main issue lies in the absence of explicit regulation concerning marital rape in Islamic criminal law (*fiqh jināyah*).⁴ Classical texts generally consider sexual relations within marriage as automatically permissible, thus rarely addressing issues of consent and coercion. However, Islamic principles clearly emphasize justice, compassion, and mutual respect in the husband-wife relationship, as reflected in the Qur'anic command to treat one's spouse with kindness (*mu'āsharah bi al-ma'rūf*).⁵ The absence of a clear legal category regarding marital rape in *fiqh* creates ambiguity about how perpetrators should be sanctioned and how victims can receive protection. This ambiguity is further exacerbated by cultural resistance, difficulties in proof, and the social sensitivities surrounding the labeling of marital rape as a criminal offense.

Several previous studies have attempted to unravel these complexities. Afrianty (2018) emphasizes the role of women's organizations in strengthening the implementation of the Elimination of Domestic Violence Law (PKDRT), which affirms that coercion of sexual relations within marriage constitutes a form of domestic

¹ Gideon Imoke Emeng and Nzeyo Gabriel Eteng, 'Divorce: An Unending Phenomenon in Human Society', *HUMAN: South Asean Journal of Social Studies* 2, no. 2 (2022): 218–32, <https://doi.org/10.26858/human.v2i2.42749>.

² Abelneh Shemaye Tasew and Koye Kassa Getahun, 'Marital Conflict Among Couples: The Case of Durbete Town, Amhara Region, Ethiopia', *Cogent Psychology* 8, no. 1 (2021): 1–17, <https://doi.org/10.1080/23311908.2021.1903127>.

³ Zanele Hope, Iwan Setiawan, and Nia Paramita, 'Society's Perception of Marital Rape and Its Impact on the Legal Attitudes of Muslim Women', *Indonesian Journal of Islamic Law* 6, no. 1 (June 30, 2023): 34–51, <https://doi.org/10.35719/ijil.v6i1.2017>.

⁴ Wahyu Atsmaruddin et al., 'Reconciling Marital Rape Within Islamic and Positive Legal Frameworks in Indonesia: A Sadd Al-Žariyah Perspective', *Al-Fiqh: Islamic Law Review Journal* 2, no. 2 (2023): 113–29, <https://ejournal.tamanlitera.id/index.php/ilrj/article/view/83>.

⁵ Mutasir Mutasir and Wahyi Busyro, 'Marital Rape in Indonesia in Maqashid Shari'ah Perspective', *El-Aqwal: Journal of Sharia and Comparative Law* 2, no. 2 (August 14, 2023): 95–110, <https://doi.org/10.24090/el-aqwal.v2i2.9340>.

violence.⁶ From a theoretical perspective, Azam (2015) and Noor (2010) highlight the problem of classifying rape within *fiqh jināyah*, questioning whether it falls under the category of *ḥadd zinā*, *jināyāt*, or *taʿzīr*. Both studies indicate that rape, including that which occurs within marriage, is more appropriately placed within the realm of *taʿzīr*. However, in certain conditions, it may involve *qiṣāṣ* or *diyāt* if physical violence is present.⁷ In line with this, Tønnessen (2014), in his study in Sudan, demonstrates how the issue of rape becomes a contested arena among Sharia, culture, and legal politics in formulating state regulations.⁸

Other studies emphasize social aspects and evidentiary challenges. Malayeri et al. (2024) demonstrate how cultural norms in Iran influence societal acceptance of rape myths, including within marriage, thereby revealing cultural legitimacy toward non-consensual sexual practices.⁹ In the Indonesian context, Afandi (2018) presents forensic data on sexual violence cases in Pekanbaru, highlighting the difficulties of proving cases that occur within the domestic sphere.¹⁰ Meanwhile, Lowe (2022) offers a more victim-centered approach in Islamic law by proposing the reclassification of rape into the realm of *taʿzīr*, so that victims are not burdened by the strict evidentiary requirements applied in *zinā* cases.¹¹ This series of studies shows that although the issue of marital rape has begun to be discussed from both legal and sociological perspectives, a comprehensive integration between the principles of Islamic criminal law and the national legal framework remains minimal.

However, there are several research gaps. Most studies focus mainly on legal classification from a theoretical standpoint or sociological analyses of cultural resistance, without presenting a systematic synthesis between doctrinal *fiqh* analysis and Indonesia's positive legal framework. The specific question of how marital rape

⁶ Dina Afrianty, 'Agents for Change', *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 174, no. 1 (January 1, 2018): 24–46, <https://doi.org/10.1163/22134379-17401024>.

⁷ Hina Azam, 'Rape as a Variant of Fornication (Zinā) in Islamic Law: An Examination of the Early Legal Reports', *Journal of Law and Religion* 28, no. 2 (January 24, 2013): 441–66, <https://doi.org/10.1017/S0748081400000102>; Azman Mohd Noor, 'Rape: A Problem of Crime Classification in Islamic Law', *Arab Law Quarterly* 24, no. 4 (2010): 417–38, <https://doi.org/10.1163/157302510X526724>.

⁸ Liv Tønnessen, 'When Rape Becomes Politics: Negotiating Islamic Law Reform in Sudan', *Women's Studies International Forum* 44 (May 2014): 145–53, <https://doi.org/10.1016/j.wsif.2013.12.003>.

⁹ Shera Malayeri et al., 'Married or on a Date: Cultural Norms and Gender Differences in Rape Perception in an Iranian Sample', *Journal of Sexual Aggression* 31, no. 2 (May 4, 2025): 156–71, <https://doi.org/10.1080/13552600.2024.2418102>.

¹⁰ Dedi Afandi, 'Medicolegal Study of Sexual Violence Cases in Pekanbaru, Indonesia: Prevalence, Pattern, and Indonesian Legal Framework', *Egyptian Journal of Forensic Sciences* 8, no. 1 (December 24, 2018): 37, <https://doi.org/10.1186/s41935-018-0067-5>.

¹¹ Julie Lowe, 'Breaking the Silence: An Islamic Legal Approach to Facilitating Reporting and Testimony by Muslim Victims and Witnesses of Sexual Crimes', *Religions* 13, no. 11 (October 26, 2022): 1017, <https://doi.org/10.3390/rel13111017>.

should be positioned within Islamic criminal law—beyond the provisions of the Elimination of Domestic Violence Law (PKDRT)—has not yet received in-depth attention. Furthermore, the *maqāṣid al-sharīʿah* approach, particularly the principle of *ḥifẓ al-ʿird* (protection of honor and dignity), is rarely utilized as a normative basis for examining sexual coercion within marriage.

This study aims to fill that gap. The novelty of this research lies in its effort to present a *maqāṣid*-based reinterpretation that positions marital rape as a *jarīmah taʿzīr*, while still allowing for the application of *qisās* and *diyāt* when physical violence is involved. By employing a normative juridical method through studying classical Islamic legal sources, *fiqh jināyah* literature, and national regulations, this research is expected to contribute to formulating more transparent and protective laws for victims. The main research question posed is: How should marital rape be understood and sanctioned within the framework of Islamic criminal law in Indonesia, and how can this approach strengthen legal protection for victims without abandoning the fundamental principles of Islamic law?

B. METHOD

This study employs a normative juridical method with a descriptive-analytical approach. This method is chosen because the study focuses on analyzing legal norms from both Islamic law and positive law perspectives in Indonesia. The primary sources used include the Qur'an, Hadith, and classical *fiqh jināyah* literature discussing the categories of *jarīmah* and principles of criminal sanctions. In addition, national regulations such as Law Number 23 of 2004 on the Elimination of Domestic Violence (PKDRT) and related rules serve as references to examine how Indonesian positive law responds to the issue of marital rape.

Data collection techniques were conducted through library research by gathering relevant primary and secondary sources. The data were analyzed using a qualitative approach, emphasizing comparison and synthesis between Islamic criminal and national law constructions. This analysis also utilizes the *maqāṣid al-sharīʿah* framework, particularly the principle of *ḥifẓ al-ʿird* (protection of honor and dignity), as a normative basis to assess the extent to which Islamic law can protect victims of marital rape. Through this approach, the study describes existing regulations and offers a normative reinterpretation to address the ongoing legal gaps.

C. RESULTS AND DISCUSSIONS

1. The Concept of Marital Rape from Social and Legal Perspectives in Indonesia

In Indonesian society, the issue of marital rape remains a sensitive, even taboo topic. Many believe that after the marriage contract (*nikāḥ*), the wife's body becomes the husband's absolute right, making sexual relations considered normal even if conducted without consent. This view is rooted in a patriarchal culture that places men in a dominant position while positioning women as those obligated to serve. As a result, the practice of coercing sexual relations within the household is often not recognized as violence but rather as part of a wife's duties.¹²

Terminologically, marital rape derives from the words *marital* (marriage) and *rape*, referring to the act of coercing sexual relations within the bounds of marriage. It can take the form of direct coercion through physical violence, threats, or psychological pressure. Often, this practice is carried out in ways considered deviant or without regard to the wife's health condition. The consequences of marital rape can be severe, both physically—such as injuries and reproductive disorders—and psychologically, including trauma, fear, and the loss of a sense of security within the household.¹³

This situation is worsened by the fact that many women who are victims of marital rape choose to remain silent. The main reasons are shame, fear of damaging the family's reputation, and a lack of support from their social environment.¹⁴ Data from the National Commission on Violence Against Women (Komnas Perempuan) shows that cases of sexual violence within the household, including marital rape, are among the most frequent forms of violence but are the least reported.¹⁵ This phenomenon reveals a gap between the reality experienced by women and the legal and social awareness that should provide protection.

¹² Ahmad Tsalis Fakhru Fauzy and Septiana Dwiputri Maharani, 'Sexual Politics and Marital Rape in Indonesia', *Politik Indonesia: Indonesian Political Science Review* 6, no. 3 (December 20, 2021): 386–99, <https://doi.org/10.15294/ipsr.v6i3.33283>.

¹³ Eva Khumairoh, Ishaq Ishaq, and Muhammad Faisal, 'Marital Rape As A Crime Of Sexual Violence In Positive Law In Indonesia', *International Journal of Law, Crime and Justice* 1, no. 2 (May 13, 2024): 51–66, <https://doi.org/10.62951/ijlcj.v1i2.59>.

¹⁴ Padma-Bhate Deosthali, Sangeeta Rege, and Sanjida Arora, 'Women's Experiences of Marital Rape and Sexual Violence Within Marriage in India: Evidence from Service Records', *Sexual and Reproductive Health Matters* 29, no. 2 (January 1, 2022), <https://doi.org/10.1080/26410397.2022.2048455>.

¹⁵ Diana Novita Sari and Jane Luvena Pietra, 'Marital Rape: What We Have to Know About It?', *buletin.k-pin.org*, 2020, <https://buletin.k-pin.org/index.php/arsip-artikel/689-marital-rape-what-we-have-to-know-about-it>.

In the realm of Indonesian positive law, marital rape is explicitly regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT). Article 8 states that coercion of sexual relations within the household constitutes a form of sexual violence punishable by law. The existence of this regulation marks an essential step in protecting women from forced sexual relations within marriage. However, implementing this law still faces many obstacles, mainly due to its status as a complaint-based offense, which requires victims to have the courage to report their cases.¹⁶

Besides formal legal challenges, difficulties also arise from evidentiary aspects. Marital rape cases usually occur in private spaces, making it challenging to present witnesses or strong evidence in court. This situation further weakens the victim's position, who is often under psychological and economic pressure from the perpetrator, who is none other than her husband. As a result, despite legal protection, victims still struggle to obtain proper justice. It indicates that legal protection for victims of marital rape remains ineffective in practice.¹⁷

Furthermore, the discourse on marital rape also touches on the religious sphere, particularly within the context of Muslim communities in Indonesia. Islamic teachings indeed emphasize the importance of husband and wife fulfilling each other's biological needs. However, the principle of *mu'āsharah bi al-ma'rūf* affirms that this relationship must be conducted with mutual respect and compassion, not through coercion or violence. Therefore, marital rape cannot be legitimized merely based on the marriage bond. On the contrary, it contradicts the fundamental Islamic values of justice, compassion, and respect for human dignity.

2. The Construction of Marital Rape in *Fiqh Jināyah* Literature

Fiqh jināyah literature, as a branch of Islamic criminal law, generally does not use the term marital rape as understood in modern legal discourse. It can be understood because, in the classical context, marriage is viewed as a valid contract granting rights and obligations to both husband and wife. One of the rights vested in the husband is to

¹⁶ Ani Agus Puspawati, Bambang Utoyo, and Yudha Suchmasasi, 'Analysis of the Implementation of Domestic Violence Prevention in Indonesia', *Sosiohumaniora* 25, no. 3 (November 2, 2023): 379–92, <https://doi.org/10.24198/sosiohumaniora.v25i3.42362>.

¹⁷ Husin Wattimena and Muis S. A. Pikahulan, 'Legal Study of Evidence of Domestic Psychological Violence in Indonesia', *Journal of Law and Sustainable Development* 13, no. 4 (April 23, 2025): e04380, <https://doi.org/10.55908/sdgs.v13i4.4380>; Helen Simpson, 'The Devil Is in the Detail: An Evaluation of Domestic Violence Evidence-in-Chief in Policing Practice', *Current Issues in Criminal Justice*, July 6, 2024, 1–17, <https://doi.org/10.1080/10345329.2024.2369470>; Richard R. Peterson and Deirdre Bialo-Padin, 'Domestic Violence Is Different: The Crucial Role of Evidence Collection in Domestic Violence Cases', *Journal of Police Crisis Negotiations* 12, no. 2 (November 2012): 103–21, <https://doi.org/10.1080/15332586.2012.717047>.

receive sexual services from his wife. In contrast, the wife has the obligation to fulfill this need as long as there are no valid *sharī'ah* impediments, such as menstruation or illness. Therefore, coercion of sexual relations within marriage is not explicitly categorized as a separate criminal offense in classical *fiqh* texts.

However, the fundamental principles of Islam do not actually permit coercion or violence in the husband-wife relationship. *Fuqahā'* (jurists) emphasize the obligation to treat one's spouse well (*mu'āsharah bi al-ma'rūf*), as stated in Qur'an Sūrah al-Nisā' [4]:19. This verse is often used as a normative foundation that the marital relationship must not be based on violence or unilateral domination. Thus, although the term marital rape is not recognized, the substance of Islamic teachings contains a spirit that rejects the practice of coercing sexual relations.¹⁸

In *fiqh* literature, acts of coercion that cause physical or psychological suffering to the wife can be classified as crimes of assault (*jarīmah al-ḍarb wa al-jurūh*). If the coercion results in wounds or injuries, the husband may be subject to *qiṣās* or *diyāt* sanctions according to the extent of the damage inflicted. Meanwhile, suppose the coercion only causes psychological suffering or non-physical forms of violence. In that case, the case can be categorized as a *jarīmah ta'zīr*, where the determination of sanctions is left to the *uli al-'amr* (ruler) or authorities. Thus, there is actually room to punish perpetrators of marital rape within the framework of *fiqh jināyah*.¹⁹

Several contemporary scholars have also begun to highlight the issue of marital rape as part of evolving social realities that Islamic law must address. Sexual relations within marriage must be based on consent and compassion, not coercion. This perspective reflects a new *ijtihād* that is more responsive to issues of domestic violence and strengthens the legal protection of women. Thus, the construction of *fiqh jināyah* is not rigid, but can be contextualized in accordance with the principles of *maqāṣid al-sharī'ah*.²⁰

¹⁸ Nina Nurmila, 'Indonesian Muslims' Discourse of Husband-Wife Relationship', *Al-Jami'ah: Journal of Islamic Studies* 51, no. 1 (June 15, 2013): 61, <https://doi.org/10.14421/ajis.2013.511.61-79>; Afif Thohir Furqoni and Abdul Mukti Thabrani, 'Islamic Legal Ethics to Marital Rape: Juxtaposing Mu'āsharah bi al-Ma'rūf and Ḍarār Ma'nawi Principles', *Al-Ahwal: Jurnal Hukum Keluarga Islam* 15, no. 1 (June 30, 2022): 127–44, <https://doi.org/10.14421/ahwal.2022.15107>.

¹⁹ Fernenda Purdiantika and Lukman Santoso, 'Pengaturan Marital Rape di Indonesia Perspektif Fiqh Jinayah tentang Keluarga', *Jurnal Antologi Hukum* 4, no. 2 (October 28, 2024): 340–64, <https://doi.org/10.21154/antologihukum.v4i2.3965>.

²⁰ Mutasir and Busyro, 'Marital Rape in Indonesia in Maqashid Shari'ah Perspective'.

In addition, the principle of *ḥifẓ al-ʿird* (protection of honor) within the *maqāṣid al-sharīʿah*²¹ this provides theological legitimacy that marital rape is an act that violates human dignity. From this perspective, the wife's body is not an object of ownership by the husband, but part of her honor that must be protected. The coercion of sexual relations constitutes a violation of that honor. It is therefore contrary to the objectives of the *maqāṣid*. Based on this argument, marital rape can be constructed as a serious criminal offense in Islamic law, even if it is not explicitly mentioned in classical texts.

Thus, *fiqh jināyah* literature offers not only a normative foundation but also a broad scope for *ijtihād* in formulating sanctions for perpetrators of marital rape. Although the term itself was not known in the classical era, the fundamental principles of Islam—such as justice, respect for human dignity, and the prohibition of violence—can serve as a basis for developing legal constructs relevant to contemporary contexts. It affirms that Islamic law possesses the flexibility to respond to modern social problems, including protecting women against sexual violence within marriage.

3. Marital Rape as a *Jarīmah Taʿzīr* in the Perspective of Islamic Law

In Islamic criminal law, *jarīmah* (criminal offense) is generally divided into three major categories: *ḥudūd*, *qiṣāṣ-diyāt*, and *taʿzīr*. *Jarīmah ḥudūd* refers to crimes for which specific punishments have been prescribed by the Sharīʿah, such as *zinā* (adultery), *qadhf* (false accusation of adultery), or theft. *Jarīmah qiṣāṣ-diyāt* relates to offenses that result in physical harm or loss of life, with punishments including proportional retaliation or specific financial compensation. Meanwhile, *jarīmah taʿzīr* includes crimes for which the punishment is not explicitly determined in the scriptural texts (*naṣṣ*). Thus, the sentencing is left to the discretion of the *uli al-ʿamr* (authority) or judge, based on public interest (*maṣlaḥah*).²² The legal status of marital rape can generally be placed within the last category (*taʿzīr*), as there is no explicit provision in classical texts that regulates it.

Coercion of sexual relations within marriage does not fulfill the elements of a *jarīmah ḥudūd*, as it does not constitute *zinā*. In *fiqh*, *zinā* is defined as sexual intercourse outside a valid marital relationship. In the case of spousal rape, the act occurs within a legitimate marriage, and therefore cannot be classified as *zinā*. However, because it involves elements of coercion and violence, it is more

²¹ Khairul Hamim and Lalu Supriadi, 'The Contextualization of Ḥifẓ al-ʿIrḍ on Hoax News (A Study on Imam Tājuddīn al-Subkī's Maqāṣid Al-Sharīʿa)', *Ulumuna* 24, no. 2 (December 31, 2020): 348–66, <https://doi.org/10.20414/ujis.v24i2.405>.

²² ʿAbd al-Qādir ʿAwdah, *Al-Tashrīʿ al-Jināʿī fī al-Islām Muqāranan bi al-Qānūnī al-Waḍʿī* (Beirut: Dār al-Kutub al-ʿIlmiyyah, n.d.).

appropriately categorized as a *jarimah ta'zīr*. Within this framework, the authorities have the discretion to determine appropriate punishments based on the severity of the violation and the harm caused.²³

In *fiqh jināyah* literature, *ta'zīr* upholds justice and prevents social harm. Ibn Qudāmah, in *al-Mughnī*, explains that *ta'zīr* is a form of punishment intended for both discipline (*ta'dīb*) and deterrence (*zajr*), making its scope broad—it covers all acts that cause harm to others but are not assigned specific sanctions in the Sharī'ah.²⁴ Based on this principle, marital rape can be positioned as an act that harms the wife, both physically and psychologically, and is therefore deserving of *ta'zīr* punishment.

The forms of *ta'zīr* punishment are highly flexible, ranging from warnings, fines, imprisonment, to light physical penalties—depending on the judge's discretion and the severity of the offense. Scholars such as al-Māwardī, in *al-Aḥkām al-Sultāniyyah*, emphasize that the ruler has the authority to determine the appropriate form of *ta'zīr* in accordance with the public interest (*maṣlahah*).²⁵ In the context of marital rape, *ta'zīr* punishments can be imposed in forms that serve both as a deterrent to the perpetrator and as protection for the rights of the wife as a victim.

Suppose marital rape is committed with violence that causes injury or permanent harm to the wife. In that case, the case may warrant dual punishment: *qīṣāṣ-diyāt* for the physical damage, and *ta'zīr* for the element of coercion and the violation of her dignity. It shows that Islamic law actually provides sufficient legal tools to prosecute perpetrators of marital rape, even though it is not regulated under a specific legal clause. The flexibility of Islamic law within the *ta'zīr* framework allows for the protection of victims without forcing the crime into rigid, predefined categories.

Several contemporary scholars have also emphasized the importance of classifying marital rape as a *jarimah ta'zīr*.²⁶ Wahbah al-Zuhaylī, for instance, emphasizes that all forms of domestic violence, including the coercion of sexual relations, are contrary to the principles of compassion (*rahmah*) and kind treatment toward one's wife.²⁷ Therefore, the *ta'zīr* punishment imposed on perpetrators of

²³ Azam, 'Rape as a Variant of Fornication (Zinā) in Islamic Law: An Examination of the Early Legal Reports'.

²⁴ Muḥammad Ibn 'Abdullāh Ibn Qudāmah, *Al-Mughnī* (Riyāḍ: Dār 'Alam al-Kutub, 1997).

²⁵ 'Alī ibn Muḥammad ibn Ḥabīb Al-Māwardī, *Al-Aḥkām al-Sultāniyyah wa al-Wilāyāt al-Dīniyah* (Mesir: Dār al-Ḥadīth, n.d.).

²⁶ Lowe, 'Breaking the Silence: An Islamic Legal Approach to Facilitating Reporting and Testimony by Muslim Victims and Witnesses of Sexual Crimes'.

²⁷ Wahbah Al-Zuhaylī, *Al-Fiqh al-Islāmī wa Adillatuh*, 2nd ed. (Damaskus: Dār al-Fikr al-'Arabī, 1985).

marital rape must reflect the spirit of protecting the victims and preventing repeated violence. It is also in line with the *maqāṣid al-sharī'ah* principles of safeguarding honor (*ḥifẓ al-ʿird*) and life (*ḥifẓ al-nafs*).

By classifying marital rape as a *jarimah taʿzīr*, Islamic law can address contemporary challenges while maintaining its relevance to social realities. This concept allows rulers or judges in Muslim countries, including Indonesia, to establish regulations and sanctions that fit the needs of the time. Thus, marital rape is no longer seen as a gray area within Islamic law, but rather as a clear form of violence that can be punished criminally. It affirms that Islamic law has normative flexibility capable of protecting the rights of women within marriage.

4. Analysis of *Maqāṣid al-Sharī'ah* on Marital Rape

Maqāṣid al-sharī'ah, as the primary objective of Islamic law, functions to preserve human welfare and simultaneously prevent harm (mafsadah).²⁸ Classical scholars such as al-Ghazālī and al-Shāṭibī emphasized that the *maqāṣid* encompass five main objectives: the protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-ʿaql*), lineage (*ḥifẓ al-nasl*), wealth (*ḥifẓ al-māl*), and honor (*ḥifẓ al-ʿird*).²⁹ In the context of marital rape, the two most relevant *maqāṣid* are *ḥifẓ al-nafs* (protection of life) and *ḥifẓ al-ʿird* (protection of honor), because the coercion of sexual relations threatens both the physical safety and the dignity and honor of women.

The principle of *ḥifẓ al-nafs* demands protecting human life and physical safety.³⁰ Marital rape often causes serious harm to a woman's body, ranging from injuries to reproductive organs to long-term health complications. In extreme cases, sexual coercion can even endanger life. Therefore, marital rape directly contradicts the *maqāṣid* aimed at preserving human life. Its handling must be taken seriously and not merely regarded as a private matter within the household.

On the other hand, *ḥifẓ al-ʿird* emphasizes the importance of safeguarding a person's honor and dignity.³¹ From an Islamic perspective, a woman's honor is not

²⁸ Maskur Rosyid and M. Nurul Irfan, 'Reading Fatwas of MUI a Perspective of Maslahah Concept', *Syariah: Jurnal Hukum dan Pemikiran* 19, no. 1 (June 2, 2019): 91–117, <https://doi.org/10.18592/sjhp.v19i1.2726>.

²⁹ Abū Ḥāmid Muḥammad Ibn Muḥammad Al-Ghazzālī, *Al-Mustasfā min 'Ilm al-Uṣūl* (Beirut: Dār al-Fikr, n.d.); Abū Ishāq Ibrāhīm bin Mūsā Bin Muḥammad Al-Shāṭibī, *Al-Muwāfaqāt fi Uṣūl al-Sharī'ah* (Arab Saudi: Dār Ibn 'Affān, 1997).

³⁰ Moh Dahlan et al., 'The Islamic Principle of Ḥifẓ al-Nafs (Protection of Life) and COVID-19 in Indonesia: A Case Study of Nurul Iman Mosque of Bengkulu City', *Heliyon* 7, no. 7 (July 1, 2021): 1–9, <https://doi.org/10.1016/J.HELIYON.2021.E07541>; Eko Siswanto and Athoillah Islamy, 'Fikih Moderasi Beragama dalam Kehidupan Bernegara di Indonesia', *Al-Adalah: Jurnal Hukum dan Politik Islam* 7, no. 2 (2022): 198–217, <https://doi.org/10.35673/ajmpi.v7i2.2802>.

³¹ Hamim and Supriadi, 'The Contextualization of Ḥifẓ al-'Ird on Hoax News (A Study on Imam Tājuddīn al-Subkī's Maqāṣid Al-Sharī'a)'.

merely a matter of sexual morality but also involves her right to be treated with respect and dignity within the household. Marital rape clearly constitutes a violation of this honor because the wife's body is treated as an object without her consent. Such actions undermine the fundamental values of marriage, which should be based on love and mutual respect.

The analysis of *maqāṣid* also opens space for the reinterpretation of Islamic law in addressing contemporary issues.³² Suppose marital rape is not explicitly addressed in classical texts. In that case, *maqāṣid* can serve as a basis for *ijtihād* to categorize this act as a *jarīmah* (criminal offense). Thus, Islamic law remains responsive to social dynamics and can protect victims. It also demonstrates that *maqāṣid* functions as the spirit that animates the Sharia, rather than merely a collection of rigid rules.

In a social context, the *maqāṣid* approach to marital rape supports the creation of a healthy and harmonious family. Islam regards marriage as a sacred bond aimed at establishing tranquility (*sakīnah*), love (*mawaddah*), and mercy (*rahmah*). Sexual coercion clearly undermines this purpose by turning the household from a space of affection into one of violence. Therefore, the prevention and prosecution of marital rape align with the *maqāṣid* in safeguarding the institution of the family.

Furthermore, *maqāṣid al-sharī'ah* can serve as a foundation for integrating Islamic law with positive law in Indonesia.³³ The PKDRT Law (Law on the Elimination of Domestic Violence), which prohibits the coercion of sexual relations, can be seen as aligned with *maqāṣid*, since both aim to protect life and dignity. Within the *maqāṣid* framework, Islamic law need not be seen as conflicting with national law. Still, they can complement each other in providing maximal protection for victims of marital rape.

Ultimately, the *maqāṣid* analysis affirms that marital rape is not merely a violation of domestic ethics but a crime that contradicts the primary objectives of the Sharia. Through the *maqāṣid* approach, Islamic law can offer normative legitimacy as well as a moral foundation to prosecute perpetrators of marital rape. In this way, Islam emerges as a religion that protects human dignity and rejects all forms of violence, including those occurring within marriage.

³² Mohammad Hashim Kamali, 'Approaches to Maqāṣid: Reductionism, Expansionism and Moderation (Tafriṭ, Ifrāt, I'tidāl)', in *Actualization (Tafīl) of the Higher Purposes (Maqāṣid) of Shariah* (International Institute of Islamic Thought (IIIT), 2020), 6–9; A Duderija, 'Islamic Law Reform and Maqāṣid al-Sharī'a in the Thought of Mohammad Hashim Kamali', *Maqasid al-Sharī'a and Contemporary Reformist Muslim Thought: An Examination*, 2014, https://doi.org/10.1057/9781137319418_2.

³³ Basar Dikuraisyin et al., 'Reconstruction of Marriage Law: Judges' Progressive Reasoning Based on Maqāṣid in Addressing Divergent Interpretations in Indonesian Courts', *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 2 (2024): 219–36, <https://doi.org/10.24090/mnh.v18i2.9436>.

5. The Relationship between Islamic Law and Indonesian Positive Law in Regulating Marital Rape

The discourse on marital rape in Indonesia cannot be separated from the relationship between Islamic law as the normative source for the majority of society and positive law as the formal rules of the state. Both often run in parallel, yet at specific points show different emphases. In this context, Islamic law is viewed as the ethical-religious foundation. In contrast, positive law provides the binding juridical-formal basis. Therefore, understanding the connection between the two is essential to seeing to what extent legal protection for victims of marital rape can be realized.

Indonesian positive law has recognized marital rape as a criminal act through Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT). Article 8 explicitly includes the coercion of sexual relations as one form of sexual violence that can be subject to criminal sanctions.³⁴ This provision provides formal legal protection for wives who are victims of marital rape. However, in practice, many obstacles remain, especially related to social stigma, difficulties in proving the case, and the weak position of the victim within the household.

Meanwhile, in classical Islamic law, marital rape is not explicitly regulated as a criminal act. However, the principle of *mu'āsharah bi al-ma'rūf* (living together with kindness), which emphasizes the husband-wife relationship based on goodness, as well as the prohibition of violence or coercion, provides room to categorize such actions as *jarīmah*, particularly within the framework of *ta'zīr*. Thus, although there is no explicit provision, the substance of Islamic law actually aligns with positive law in rejecting the practice of marital rape.

The relationship between the two becomes clearer when analyzed through *maqāshid al-sharī'ah*. The PKDRT Law, which prohibits marital rape, can be seen as consistent with the principles of *ḥifẓ al-nafs* (protection of life) and *ḥifẓ al-'ird* (protection of honor). Therefore, Indonesian positive law does not conflict with Islamic law but rather strengthens the implementation of Islamic values in protecting the dignity and safety of women. It is essential to dispel the assumption that the prohibition of marital rape contradicts religious teachings.³⁵

³⁴ Nida Ananta, Aji Mulyana, and Mia Amalia, 'Legal Protection for Victims of Domestic Violence: Sociological Analysis and Legal Implications', *Qawanin Jurnal Ilmu Hukum* 6, no. 1 (March 21, 2025), <https://doi.org/10.56087/qawaninjih.v6i1.522>.

³⁵ Fania Putri Zaidhatul, Kurniati Kurniati, and Asni Asni, 'Violence in the Household (KDRT) Perspective Maqashid Sharia (Case Study at Sungguminasa District Court)', *International Journal of Islamic Studies* 3, no. 2 (December 31, 2023): 191–207, <https://doi.org/10.24252/ijis.v3i2.43355>.

Nevertheless, there remains a gap in understanding at the societal level. Some groups still reject the concept of marital rape, arguing that Islam obligates the wife to serve her husband.³⁶ This view arises from a textual understanding that neglects *maqāṣid* and the social context. In fact, positive law has taken a progressive step by criminalizing marital rape. In this context, efforts are needed to harmonize understandings so that society can accept both Islamic law and positive law simultaneously.

This harmonization can be achieved through educational approaches in formal education and religious preaching. Scholars, academics, and law enforcers have strategic roles in explaining that the prohibition of marital rape is not contrary to Islam but aligns with the spirit of preserving the dignity and honor of women. With such an approach, positive law is no longer seen merely as a product of a secular state but also as a realization of sharia values.

Moreover, the relationship between Islamic law and positive law on the issue of marital rape can also strengthen the legitimacy of sanctions. If relying solely on positive law, victims may be reluctant to report out of fear of violating religious norms. Conversely, suppose it is affirmed that Islam also rejects sexual coercion within marriage. In that case, victims will be more courageous in seeking legal protection. This synergy is legally and sociologically essential in building collective awareness.

Thus, the relationship between Islamic law and Indonesian positive law in regulating marital rape is not one of conflict but one with the potential to strengthen each other. Both reject sexual violence within the household and prioritize protection for victims. The most significant challenge lies in internalizing these values within a society still influenced by patriarchal culture. Therefore, strategic steps are needed going forward to synergize Islamic law and positive law so that protection for marital rape victims can truly be realized.

6. The Urgency of Reformulating Islamic and National Laws to Protect Victims of Marital Rape

Social developments and growing awareness of human rights demand a reformulation of laws, both within the Islamic legal framework and national law, to provide more comprehensive protection for victims of marital rape. Reformulation is necessary because classical law was often developed in the context of patriarchal societies. At the same time, contemporary realities require greater protection for

³⁶ Yayan Muhammad Royani, 'Relevance of the Position of the Victims in Indonesian Positive Law and Islamic Criminal Law', *Walisongo Law Review (Walrev)* 4, no. 2 (October 31, 2022): 193–220, <https://doi.org/10.21580/walrev.2022.4.2.13244>.

women. Atsmaruddin et al. (2023) highlight that the Sadd al-Žariyah approach in Islamic law calls for the reform of national laws to protect victims of marital rape more effectively.³⁷ Yuwono et al. (2023) emphasize that marital rape is a violation of human rights that requires distinct regulations and special handling within the positive legal system.³⁸ In this regard, reformulation is not intended as a total overhaul, but rather as an effort to contextualize the fundamental values of the Sharia in a way that is more relevant to the present time.

In Islamic law, the opportunity for reformulation can be pursued through the *maqāṣid al-sharī'ah* approach.³⁹ Marital rape should be understood not only as a violation of the husband-wife relationship but also as a threat to *ḥifẓ al-naḥs* (protection of life) and *ḥifẓ al-ird* (protection of honor). The *maqāṣid* approach enables contemporary scholars to assert that sexual coercion within marriage is an act that contradicts the objectives of the Sharia, and therefore deserves to be sanctioned.⁴⁰ Within this framework, the reformulation of Islamic law does not contradict tradition. Still, it revives the spirit of justice and public welfare (*maṣlaḥah*).

Meanwhile, in the context of national law, reformulation is urgently needed to strengthen protection mechanisms and legal enforcement for victims of marital rape. Although the Domestic Violence Law (UU PKDRT) has addressed this issue, its implementation often encounters evidentiary challenges and social resistance.⁴¹ Legal reform can take the form of strengthening criminal procedural law mechanisms so that marital rape cases can be processed more effectively, including the provision of legal assistance, psychological services, and witness protection for victims.⁴²

Legal reform also involves harmonizing Islamic and national laws to avoid the perception of contradiction within society. For example, by incorporating contemporary *fiqh* perspectives into public policy formulation, regulations on marital

³⁷ Atsmaruddin et al., 'Reconciling Marital Rape Within Islamic and Positive Legal Frameworks in Indonesia: A Sadd al-Žariyah Perspective'.

³⁸ Nikmatul Keumala Nofa Yuwono, Al Khanif, and Y. A. Triana Ohoiwutun, 'Pemberatan Pidana terhadap Kasus Marital Rape Ditinjau dari Perspektif Hak Asasi Manusia', *Interdisciplinary Journal on Law, Social Sciences and Humanities* 4, no. 2 (November 30, 2023): 190, <https://doi.org/10.19184/idj.v4i2.42190>.

³⁹ Alimuddin Alimuddin, 'The Urgency of the Maqāṣid al-Syarī'ah in Reasoning Islamic Law', *Britain International of Humanities and Social Sciences (BIOHS) Journal* 1, no. 2 (October 3, 2019): 117–23, <https://doi.org/10.33258/BIOHS.V1I2.42>; Zumiyati Sanu Ibrahim et al., 'Integration of Maqāṣid Al-Shari'ah in the Criminal Law Reform to Achieve Justice and Human Dignity', *Jurnal Hukum Islam* 23, no. 1 (2025): 105–44, <https://doi.org/10.28918/jhi.v23i1.04>.

⁴⁰ Mutasir and Busyro, 'Marital Rape in Indonesia in Maqashid Shari'ah Perspective'.

⁴¹ Ananta, Mulyana, and Amalia, 'Legal Protection for Victims of Domestic Violence: Sociological Analysis and Legal Implications'.

⁴² Sonny Saptoajie Wicaksono, Gabrielle Poetri Soebiakto, and Ridwan Arifin, 'Legal Aid for the Victims of Domestic Violence: Problems and Challenges', *The Indonesian Journal of International Clinical Legal Education* 3, no. 2 (June 30, 2021): 139–50, <https://doi.org/10.15294/ijicle.v3i2.47936>.

rape can gain dual legitimacy: both legal-formal and religious. It is essential to counter resistance often rooted in religious arguments, even though the essence of the Sharia actually supports the protection of victims.

On the other hand, legal reform must also include a sociological approach. Patriarchal culture remains deeply entrenched, and without a shift in social paradigms, legal reform will be challenging to implement effectively. Therefore, in addition to strengthening regulations, continuous educational campaigns are needed through academic institutions, religious organizations, and mass media. Such education aims to instill the awareness that forced sexual intercourse within marriage constitutes a form of violence that harms victims both physically and psychologically.

In addition to normative and sociological aspects, legal reform is urgently needed in the institutional sphere. Law enforcement agencies, including the police and the judiciary, must receive specialized training on handling marital rape cases from a victim-centered perspective. It would reduce the risk of re-victimization, which victims often experience when reporting such cases. Furthermore, religious institutions must also play an active role in providing moral legitimacy to victim protection policies.

In conclusion, the urgency of reforming both Islamic and national legal frameworks lies in the effort to create legal instruments that are more relevant, just, and responsive to the needs of marital rape victims. Reform does not mean abandoning tradition but rather reinterpreting the fundamental values of the Sharia and national law in a contemporary context. Through such efforts, it is hoped that synergy between religious norms, positive law, and social realities can be achieved, ensuring comprehensive protection for victims of marital rape.

D. CONCLUSION

This study demonstrates that marital rape is a complex legal and social issue, as it involves not only power relations within the household but also the legitimacy of Islamic law and positive law in Indonesia. From the perspective of *fiqh jināyah*, marital rape cannot be categorized as *zinā*. Still, it falls under the domain of *ta'zīr*. In cases involving physical violence, it may also relate to *qiṣās-diyāt*. The principles of *mu'āsharah bi al-ma'rūf* and the framework of *maqāṣid al-sharī'ah* affirm that forced sexual intercourse within marriage contradicts the objectives of the Sharia, which aim to preserve life (*ḥifẓ al-nafs*), honor (*ḥifẓ al-'ird*), and human dignity. Therefore, protecting victims of marital rape is a moral, social, and legal imperative.

A more comprehensive legal reformulation is needed, integrating the values of both Islamic law and national law to provide real protection for victims of marital rape. The government and legislative bodies must strengthen legal regulations and enforcement mechanisms. In contrast, law enforcement officers require specialized training to handle such cases sensitively. Religious institutions also play a strategic role in fostering social awareness that marital rape constitutes violence and is inconsistent with Islamic teachings. Through the synergy of regulation, education, and religious legitimacy, adequate protection for victims of marital rape can be better achieved.

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