

SEXUAL VIOLENCE IN MARRIAGE (MARITAL RAPE): A FIQH PERSPECTIVE AND THE SEXUAL VIOLENCE CRIMES LAW (UU TPKS)

Ainul Mardhiah¹, Muhammad Syahnan², Muhammad Iqbal Irham³

^{1,2}Universitas Islam Negeri Sumatera Utara, Indonesia

*Corresponding Author: ainulmardhiah@gmail.com

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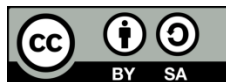
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ABSTRACT

Marital rape, as a form of sexual violence within marriage, remains a controversial issue in Indonesia, particularly when there are differing interpretations between classical Islamic jurisprudence (fiqh), contemporary Islamic jurisprudence (fiqh), and modern regulations such as the Sexual Violence Crime Law (UU TPKS). This debate is often fueled by textual understandings of a wife's obligation to obey, leading to the assumption that Islamic teachings justify forced sexual intercourse within marriage. This study aims to fill this gap by comparatively analyzing the positions of both classical and contemporary Islamic jurisprudence and the provisions of the TPKS Law to find normative common ground regarding the protection of wives' rights and dignity. Using a qualitative juridical-normative approach, this study examines authoritative Islamic jurisprudence texts, national legal regulations, and contemporary literature on sexual violence and human rights. The results show that Islamic jurisprudence does not conflict with the basic principles of the TPKS Law; both emphasize the prohibition of zhulm (indefiniteness), the importance of consent in sexual relations, and the protection of life and honor. These findings also suggest that opposition to the TPKS Law stems more from patriarchal cultural bias and misinterpretations of the hadith, rather than from sharia principles themselves. This research contributes to efforts to harmonize Islamic law with national law, while also providing a new framework that is more humane, gender-just, and relevant to the modern context of sexual violence.

Keywords: marital rape, Islamic jurisprudence, TPKS Law, sexual violence, consent

1. INTRODUCTION

The phenomenon of marital rape is one of the most difficult forms of human rights violation to identify and legally recognize, especially in societies still strongly influenced by patriarchal structures. One widely cited case is the death of a woman in Bali after her husband forced her to have sex despite her illness, a tragic event that highlights the

structural vulnerability of women's bodies within the institution of marriage (National Commission on Violence Against Women, 2022). This case is not simply an individual incident, but represents a systemic problem involving power relations, cultural legitimacy, and disproportionate religious interpretations.

In the context of Indonesian society, much of the resistance to recognizing marital rape is rooted in classical Islamic jurisprudence (*fiqh*) understandings of a wife's obligation to fulfill her husband's sexual needs. The frequently cited hadith concerning "the curse of the angels on a wife who refuses her husband's advances" is often interpreted literally, without considering the socio-historical context or the hadith's moral purpose (Rahayu, 2020). This simplistic understanding gives rise to the assumption that religion grants the husband full authority over his wife's body. In fact, normatively, the purpose of marriage in Islam is based on the principles of *sakinah*, *mawaddah*, *wa rahmah*, not unilateral domination (Al-Qaradawi, 1998).

The development of contemporary *fiqh* actually shows a more progressive interpretation tendency, emphasizing *maqāṣid al-syarī'ah* such as protection of the soul (*ḥifẓ al-nafs*) and honor (*ḥifẓ al-'ird*). Contemporary scholars such as Wahbah al-Zuhayli and Yusuf al-Qaradawi emphasize that forced sexual relations, even within marriage, is a form of *zhulm* because it eliminates the element of consent and violates the principle of *mu'āsyarah bil ma'rūf* (Al-Zuhayli, 1984; Al-Qaradawi, 1998). Thus, there is a dynamic of thought in *fiqh* that opens up space for harmonization between religious values and modern human rights principles.

On the other hand, the state, through the Sexual Violence Crimes Law (UU TPKS), has recognized marital rape as a crime, affirming that marital status does not eliminate the right to sexual consent (Ministry of Women's Empowerment and Child Protection, 2022). However, the implementation of this law often faces challenges, primarily due to clashing perceptions between modern legal values and conservative religious interpretations. This situation demonstrates a knowledge gap regarding the position of Islamic jurisprudence (*fiqh*) in responding to the issue of sexual violence, giving rise to the mistaken assumption that Islamic teachings conflict with efforts to protect victims.

This research gap lies in the lack of comprehensive studies that systematically outline the epistemological relationship between classical *fiqh*, contemporary *fiqh*, and the TPKS Law. Most previous studies have only partially highlighted positive legal aspects or aspects of *fiqh*, without deeply connecting them within a framework of legal harmonization (Sihombing, 2018). However, a comparative analysis that can explain the conceptual intersections between the two legal systems is needed to ensure that public debate is not based solely on partial normative interpretations. Based on this context, this study aims to: (1) analyze the construction of Islamic jurisprudence (*fikih*) thought regarding sexual relations in marriage, both classical and contemporary; (2) compare it with the legal framework in the TPKS Law; and (3) find a point of harmonization that can bridge the perception that Islam legalizes sexual violence in marriage. This study is expected to provide a theoretical contribution to the development of Islamic jurisprudence based on *maqāṣid* as well as a practical contribution to strengthening the understanding of national law regarding the protection of victims of marital rape. Thus, this study is relevant in efforts to build a religious and legal framework that is more humanistic, just, and contextual to the social development of Indonesian society.

2. RESEARCH METHOD

This research employs a qualitative approach with a juridical-normative design that focuses on the study of legal texts, Islamic jurisprudence norms, and statutory provisions related to sexual violence in marriage. This approach was chosen because the issue of marital rape lies at the intersection of religious law and positive law, necessitating an in-depth analysis of the primary legal sources. This juridical-normative approach allows researchers to critically interpret classical and contemporary Islamic jurisprudence provisions and compare them with state regulations, particularly the Sexual Violence Crime Law (UU TPKS), which serves as the modern legal umbrella for sexual violence in Indonesia (Hallaq, 2019).

The research data were obtained through a review of primary and secondary sources. Primary sources include authoritative fiqh works such as Wahbah al-Zuhayli's *Al-Fiqh al-Islāmī wa Adillatuhu* (1984) and Yusuf al-Qaradawi's *Fiqh al-Usrah al-Muslimah* (1998), which represent two strands of fiqh thought regarding marital relations. Furthermore, national regulations such as Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence and Law No. 23 of 2004 concerning the Elimination of Domestic Violence were also used as the basis for positive legal analysis. Secondary sources, including scientific literature, journal articles, the National Commission on Violence Against Women's annual reports, and studies related to gender and sexual violence, served to strengthen the theoretical framework and clarify the social context surrounding the issue of marital rape (Komnas Perempuan, 2022; Rahayu, 2020).

The data collection process was conducted through documentation and targeted literature review. All texts were analyzed using content analysis techniques, which allow researchers to systematically interpret the normative content of fiqh texts and legal regulations. The analysis was conducted in three stages: reading and identifying key concepts within the texts, categorizing thematic issues related to sexual relations within marriage, and establishing comparative relationships between fiqh concepts and positive legal provisions. This comparative approach is crucial for identifying the congruence, common ground, and epistemological differences between the two legal systems, ensuring that conclusions are not speculative but rather based on strong methodological arguments.

Data validity was strengthened through theoretical triangulation, comparing the analysis findings with the views of contemporary Islamic scholars, the theory of *maqāṣid al-shari'ah* (the principles of Islamic law), and modern academic studies on sexual violence. This triangulation confirmed whether the interpretation of fiqh texts aligns with the basic principles of Islamic law, which emphasize the protection of human life, honor, and dignity (Al-Qaradawi, 1998; Zuhayli, 1984). Thus, this research method not only captures the differences between fiqh and the TPKS Law textually, but also explores the legal rationality behind both.

3. RESULT AND ANALYSIS

The results of this research are developed through an in-depth analysis of classical and contemporary fiqh texts and the positive legal provisions stipulated in the Law on the

Crime of Sexual Violence (UU TPKS). The analysis process was conducted by tracing the normative construction of sexual relations within marriage, both as outlined in the works of authoritative fiqh scholars and within the framework of modern legislation. This review allows for a systematic mapping of sharia principles related to the protection of life, honor, and human dignity, then connecting them with the legal-formal principles in national law that place consent as a fundamental element in sexual relations. Thus, the research findings are not only derived from textual readings but also from contextual interpretations that take into account developments in fiqh thought and contemporary legal dynamics.

The discussion in this section emphasizes the primary focus of the research: harmonizing the perspectives of fiqh and positive law in understanding sexual violence within marriage, particularly the phenomenon of marital rape, which has long been a point of controversy in public discourse. This harmonization is not understood as an attempt to standardize all concepts, but rather to identify basic principles that align between the two legal systems, particularly regarding the protection of victims and the rejection of all forms of sexual coercion. By integrating analysis of Islamic jurisprudence texts based on the *maqāṣid al-syarī'ah* (the principles of Islamic law) and the TPKS Law, which is based on human rights, this discussion demonstrates that both legal systems fundamentally share the same orientation: creating an ethical, safe, and violence-free marital relationship.

The Concept of Marital Rape in Islamic Jurisprudence Literature and Modern Law

In the classical Islamic jurisprudence tradition, sexual relations within marriage are understood as an integral part of the rights and obligations of husband and wife, based on the marriage contract. Islamic jurisprudence scholars place sexual relations as one of the essential goals of marriage, namely fulfilling biological needs, protecting offspring, and achieving domestic harmony. Therefore, sexual intercourse is viewed as a right inherent in the husband, while the wife is positioned as obligated to comply with her husband's advances as long as there are no sharia-compliant obstacles such as illness, menstruation, or dangerous circumstances. This understanding is reflected in works of Islamic jurisprudence such as *Al-Mabsūṭ*, *Al-Majmū'*, and *Badā'i' al-Ṣanā'i'*, which generally emphasize that a wife's refusal is considered contrary to the customary marriage contract, which grants the husband the right to receive sexual favors. This relationship is considered legally valid as long as the marriage lasts, so the practice of sexual coercion is not explicitly discussed as a violation or crime.

Within the framework of classical Islamic jurisprudence, the term marital rape is unknown because the structure of sexual law is built on the paradigm that the marriage contract transfers the right to use the wife's body to the husband within certain limits permitted by sharia. The concept of a "wife's obligation" becomes dominant, primarily based on a literal reading of several hadith regarding a wife's obedience to her husband. As a result, discourse on sexual coercion did not emerge as a moral or legal problem, because intimate relationships were understood as normative obligations that were difficult to separate from the structure of power relations legitimized by culture and religious texts. The absence of terms and discussions regarding marital rape does not mean that Islamic jurisprudence justifies acts of violence, but rather because the epistemological and methodological framework of Islamic jurisprudence at that time did

not formulate sexual issues with the same ethical and legal categories as practiced in modern law.

The classical Islamic jurisprudence paradigm is inextricably linked to the social and historical factors that shaped how scholars viewed marital relations. Arab societies and Islamic regions during the classical period had a patriarchal social structure that positioned men as heads of families with full authority over the household, including sexual matters. This cultural construct also influenced the fatwas and *ijtihad* of scholars, who attempted to formulate laws in accordance with the social realities of their time. Furthermore, limited discourse on women's rights, the underdevelopment of consent theory, and the absence of modern legal protections against gender-based violence prevented classical Islamic jurisprudence from formulating the concept of marital rape as a violation of the law. Thus, an analysis of classical Islamic jurisprudence shows that the paradigm of sexual relations is constructed not only from religious texts but also from socio-historical structures that influence how law is understood, implemented, and passed down.

The development of contemporary Islamic jurisprudence is marked by an epistemological shift from a literal, textual approach to a more substantial approach through the *maqāṣid al-shari'ah* (objectives of the law) and the values of protecting human dignity. While classical Islamic jurisprudence emphasized the structure of obligations based on normative texts read directly, contemporary scholars see the importance of understanding the objectives of law (*maqāṣid*) as a basis for responding to modern problems, including the issue of sexual violence in marriage. The *maqāṣid* approach emphasizes the protection of the soul (*ḥifẓ al-nafs*), honor (*ḥifẓ al-'ird*), and reason (*ḥifẓ al-'aql*) as the primary objectives of sharia. Within this framework, sexual relations are no longer understood merely as a wife's mechanical obligation to her husband, but as an ethical interaction that must fulfill the elements of consent, respect, security, and well-being of both parties.

This shift allows contemporary Islamic jurisprudence to reassess practices previously taken for granted, including acts of sexual coercion, which are now understood as violations of morality and sharia law. In line with this approach, many contemporary scholars assert that sexual coercion in marriage is a form of *zhulm* (infidelity) that contradicts the principle of mutual benefit (*mu'āsyarah bil ma'rūf*) as mandated in Surah An-Nisa': 19. Figures such as Yusuf al-Qaradawi, Wahbah al-Zuhayli, and Ibn Bayyah emphasize that intimate relationships must be based on consent and affection, not coercion or domination. They assert that the hadiths regarding a wife's obedience cannot be understood literally without considering the Islamic moral ideal of creating a harmonious family and maintaining mutual dignity. In this context, sexual coercion is seen as undermining the purpose of marriage (*maqāṣid al-zawāj*) because it negates the principles of *sakinah* (compassion), *mawaddah* (love), and *rahmah* (mercy).

Thus, rejecting sexual coercion is not only in line with the values of modern humanism but also consistent with the fundamental principles of sharia. Contemporary Islamic jurisprudence arguments are strengthened through the integration of the principle of "no harm and no harm to each other," which is one of the basic principles of Islamic law. This principle serves as an important basis for assessing a husband's actions that force his wife to have sexual intercourse, because such actions not only deprive her of her right to bodily

autonomy but can also cause physical, psychological, and emotional harm. Using this principle, contemporary scholars state that a husband's rights in marriage are never absolute or justify actions that harm a partner. Instead, all forms of relationships, including sexual relations, must be subject to the principles of non-violence and mutual protection of the common good. This approach shifts the paradigm of Islamic jurisprudence from a mere relationship of rights and obligations to an ethical relationship grounded in the protection of human dignity, a core teaching of Islam.

Within Indonesia's national legal framework, marital rape, or forced sexual intercourse within marriage, is firmly recognized through Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS). This law defines marital rape as a form of sexual coercion committed within a marital relationship, without providing exceptions based on marital status. This demonstrates that national law views the individual body as a legal subject with full autonomy, so that the existence of a marriage contract cannot be used to justify the deprivation of a person's right to bodily integrity and sexual safety. By criminalizing domestic sexual coercion, the TPKS Law addresses a legal gap that previously failed to provide adequate protection for victims of sexual coercion by their partners.

One of the key pillars of the TPKS Law is the principle of consent, which serves as the basis for legitimacy in sexual relations. This principle affirms that sexual intercourse is only legally valid if it is voluntary, without coercion, psychological pressure, threats, or other forms of manipulation. Thus, even if a husband and wife are legally married, the right to refuse remains entirely with each party. Consent in the TPKS Law is understood as free consent given without intimidation and can be withdrawn at any time. This principle aligns with developments in international law and human rights norms and represents a significant shift in national law, which was previously influenced by a patriarchal mindset that positioned women as obligated to "serve" their husbands.

To ensure justice for victims, the TPKS Law establishes a more comprehensive evidentiary and protection mechanism than previous regulations. Proof of marital rape can be obtained through a post-mortem examination, medical records, digital evidence such as threatening messages, witness statements, and psychological assessments that identify the impact of trauma. This approach expands the evidence base beyond physical evidence, considering that many victims of sexual violence do not show visible injuries but suffer profound psychological damage. Furthermore, the TPKS Law adopts a victim-centered approach, which provides important rights such as identity protection, legal assistance, health and psychological services, shelter, and restitution from the perpetrator. With this mechanism, national law not only ensnares the perpetrators, but also ensures holistic recovery for the victims, so that violent incidents do not recur and victims can regain a sense of security and dignity.

Comparative Analysis of Islamic Jurisprudence and the TPKS Law

The normative intersection between Islamic jurisprudence and positive law is evident in their respective attitudes toward actions that harm a partner, whether physically or psychologically. Both Islamic jurisprudence and the TPKS Law emphasize that marriage should not be a space that legitimizes actions that cause harm or suffering to either party. In the Islamic jurisprudence tradition, the principle of *mu'āsyarah bil ma'rūf* requires husbands and wives to treat each other with kindness, gentleness, and without harm. At

the same time, the TPKS Law explicitly defines sexual coercion as a criminal act that violates fundamental individual rights. Despite using different argumentative frameworks, both legal systems normatively agree that marital relations should not contain elements of violence or coercion. The convergence of these two legal systems is further strengthened when analyzed through the principles of protecting dignity (*ḥifẓ al-ʿird*) and protecting the soul (*ḥifẓ al-nafs*), which form the foundation of the *maqāṣid al-syarīʿah* (the protection of the soul). Modern Islamic jurisprudence emphasizes that maintaining honor and the safety of the soul are the highest legal objectives that must not be compromised, even in marital relations. This principle aligns with positive law, which makes bodily integrity, psychological security, and human dignity fundamental elements. Thus, there is substantive harmony between the two: both sharia and national law protect the body, soul, and human dignity from acts that demean, harm, or coercion.

Furthermore, contemporary Islamic jurisprudence and the TPKS Law demonstrate important similarities in placing consent as the foundation of healthy sexual relations. In modern interpretations, scholars emphasize that intimate relations within marriage still require the element of *ridāʾ* (consent); without it, the relationship is not only considered unethical but also contradicts the principle of compassion (*rahmah*), the purpose of marriage. The TPKS Law explicitly institutionalizes this principle through the concept of consent, which emphasizes that consent cannot be coerced and can be withdrawn at any time. Thus, both modern Islamic jurisprudence and national law affirm that sexual intercourse is only valid if it is voluntary and ethical.

However, epistemological differences persist because classical Islamic jurisprudence and modern law originate from different contexts and theoretical foundations. Classical Islamic jurisprudence developed within the patriarchal structure of medieval society, where gender relations were hierarchically structured and husbands' rights were understood within the framework of family authority. In contrast, modern law, including the TPKS Law, emerged from a human rights tradition that places equality, bodily integrity, and individual freedom as core principles. This difference in historical context explains why classical Islamic jurisprudence tends not to use legal categories such as marital rape, while modern law affirms it as a serious violation.

Contemporary Islamic jurisprudence acts as a harmonizing bridge between these two epistemological systems by adopting the *maqāṣid* approach. Contemporary scholars reinterpret classical Islamic jurisprudence texts to better align with universal humanitarian values and the needs of modern society, without neglecting sharia principles. Meanwhile, the TPKS Law operates within the framework of a positive legal system that formally regulates procedures, evidence, and sanctions. This distinction demonstrates that *fiqh* provides an ethical and moral foundation, while positive law provides concrete and structured law enforcement tools.

Conceptual differences are also evident in the terminology and operationalization of concepts used by each system. Classical Islamic jurisprudence uses terms such as "wifely obedience" and "husband's rights," which reflect the socio-historical constructs of its time. In contrast, modern law uses terms such as "sexual consent" and "bodily rights," which emphasize that every individual has full autonomy over their body, even within the marriage bond. This difference in terminology has a significant impact on how society and law enforcement officials understand the issue of sexual coercion: some still use the

framework of wifely obedience as justification, while modern law views such acts as a violation of fundamental rights. Therefore, this gap in understanding needs to be bridged through legal education, religious reinterpretation, and reform of public discourse to ensure effective protection for victims of marital rape.

Factors Contributing to Misunderstandings of Marital Rape

One of the roots of the greatest misunderstanding regarding marital rape in Indonesian Muslim society is the patriarchal bias in the interpretation of the hadith, particularly the hadith that states "the curse of the angels upon a wife who rejects her husband's advances." Literal readings of this hadith text, without considering the historical context, ethical objectives, and social structure of society during the Prophet's time, often lead to the verse being interpreted as legitimizing a wife's absolute obligation to fulfill her husband's sexual desires. However, contemporary scholars emphasize that the hadith text should be read within the framework of building family harmony, not as an instrument of domination (Rahayu, 2020). Patriarchal bias arises when interpretations are conducted without considering psychological dynamics, health conditions, or the principle of *mu'āsyarah bil ma'rūf*. When the text is understood rigidly, it becomes a tool to justify power structures that harm women, even though sharia essentially prohibits all forms of action that endanger a partner (Al-Zuhayli, 1984).

The limited use of hermeneutical approaches in general society exacerbates these misinterpretations. Most people only accept religious teachings through textual and normative approaches, without being introduced to methods of understanding that consider the objectives of the law (*maqāṣid al-shari'ah*) and the social context in which the text emerged. This situation often results in religious texts being partially adopted and practiced without critical reflection. Low religious literacy allows for the reproduction of patriarchal narratives rooted in classical Islamic jurisprudence, which developed in a hierarchical society oriented toward male dominance (Hallaq, 2019). Consequently, discursive spaces such as religious study groups, family education, and religious institutions often perpetuate outdated mindsets that are inconsistent with the principles of justice and protection of dignity that are core to Islamic teachings (Al-Qaradawi, 1998).

The lack of understanding of gender-based law among law enforcement officials is also a serious reason why marital rape is rarely handled proportionally. Many officials still view sexual relations within marriage as a domestic matter or an unavoidable obligation, resulting in victims' reports often being ignored or deemed not to meet the criteria for violence. This demonstrates the persistent perception that marriage eliminates a woman's right to bodily autonomy, despite national law affirming otherwise (National Commission on Violence Against Women, 2022). The inability of officials to distinguish between voluntary sexual relations and forced sexual relations means that many cases do not reach the judicial process, indicating an epistemological gap in the application of the law (Sihombing, 2018).

At the societal level, a lack of understanding of the concept of consent contributes to the myth that sexual relations within marriage are the husband's sole right. Patriarchal culture shapes gender constructs that position women as the obligatory party, while the wife's wishes and comfort are considered irrelevant. This narrative contradicts modern legal principles that make consent an absolute requirement, even within marital relationships (Ministry of Women's Empowerment and Child Protection, 2022). When

society fails to understand that consent can be withdrawn at any time, sexual coercion is easily normalized. In many cases, women who refuse are considered "disobedient," thus internalizing guilt, preventing them from reporting the violence they experience.

Furthermore, the reproduction of social narratives that harm women continues through the use of misconstrued religious arguments, reinforced by a culture of silence and the shame felt by victims to disclose domestic sexual violence. Social norms that place family honor above individual safety lead many victims to choose to conceal their experiences rather than face social stigma. This culture contradicts the goal of Islamic law to eliminate harm (*raf' al-ḍarar*) and the goal of the TPKS Law to provide comprehensive protection for victims. When patriarchal narratives remain dominant and victims lack a safe space to speak out, sexual violence within marriage becomes a hidden yet very real phenomenon in society.

Relevance of Findings to Legal Strengthening and Public Education

The analysis shows that Islamic jurisprudence (*Fiqh*) and the TPKS Law are not fundamentally contradictory in principle. Both share the same orientation: protecting human dignity, preventing harm, and maintaining family unity. In Islamic jurisprudence, the principle of "*lā ḍarar wa lā ḍirār*" (the right to harm) underlies the prohibition of all acts that cause harm, including sexual coercion (Al-Zuhayli, 1984). On the other hand, the TPKS Law explicitly criminalizes sexual coercion within marriage, aiming to maintain individual security and safety (Ministry of Women's Empowerment and Child Protection, 2022). Thus, harmonization of the two can be achieved through a religious moderation approach, which emphasizes the importance of reading *fiqh* texts contextually and in line with the objectives of *sharia* (*maqāṣid al-syarī'ah*) in protecting victims. This approach is particularly relevant in the socialization of the TPKS Law in religious circles to prevent it from being perceived as contradictory to Islamic *sharia* principles.

An important implication of this finding is the need to strengthen women's empowerment through an understanding of *fiqh* from a *maqāṣid* perspective. *Fiqh* interpretations that emphasize the protection of dignity, justice, and balanced gender relations can provide a strong foundation for correcting patriarchal practices reproduced in the name of religion (Al-Qaradawi, 1998). Religious education needs to integrate this approach so that women understand their rights and men understand the ethical boundaries in marital relations. When *fiqh* is delivered within the *maqāṣid* framework, women are no longer positioned as mere objects of obligation, but rather as dignified subjects with rights to their bodies, safety, and consent in sexual relations. Thus, Islamic jurisprudence can be an instrument of empowerment, not an instrument of legitimizing injustice.

Strengthening religious narratives that protect women is crucial in building a more gender-equitable public awareness. Religious narratives that have tended to emphasize a wife's obedience without balancing it with a husband's obligation to treat his wife well often result in biased interpretations that disadvantage women (Hallaq, 2019). Therefore, educational institutions, religious organizations, and religious leaders need to mainstream religious discourse that reflects the values of mercy, mutual respect, and respect for bodily integrity. Such narratives not only improve how society understands marital relations but

also create a discursive space that rejects sexual violence as something justified by religion.

From a public policy perspective, this research underscores the importance of gender-sensitive training for law enforcement officers and religious leaders. Many marital rape cases are not handled effectively because authorities still view sexual relations as a wife's obligation or a private household matter (National Commission on Violence Against Women, 2022). Training that focuses on the dynamics of sexual violence, the concept of consent, and the psychological impact on victims is essential to shift the paradigm of case handling. Similarly, religious leaders need to be equipped with a contemporary Islamic jurisprudence perspective to avoid issuing fatwas or advice that reinforce patriarchal culture. This training-based policy can produce officials and community leaders who are more responsive to victims and better understand the applicable legal framework.

Furthermore, strengthening complaint platforms and integrated services is a crucial part of efforts to protect marital rape victims. Many victims do not report their violence due to fear of stigma, distrust of authorities, or ignorance of reporting mechanisms. Integrated services based on the TPKS Law, such as legal assistance, safe spaces (shelters), psychological support, and restitution, need to be optimized to facilitate victims' access to justice. Local governments, community service institutions, and women's organizations need to build strong networks to provide safe, confidential, and responsive complaint channels to victims' needs (Sihombing, 2018). When service systems are strengthened, efforts to eradicate marital rape will not only be penal but also transformational.

The debate over marital rape fundamentally stems not from Islamic jurisprudence (fiqh) or the TPKS Law itself, but from society's misinterpretation of both legal systems. Classical fiqh is often misunderstood as legitimizing husbands' ability to force their wives into sexual intercourse, even though fiqh never condones acts that cause harm, suffering, or oppression. Similarly, the TPKS Law is often considered contrary to religious teachings simply because the public does not fully understand its philosophical framework and legal objectives. This misunderstanding creates a polarization between "religious law" and "state law," even though the two can complement each other when read contextually and based on humanitarian values. Thus, the core of the problem lies in interpretive bias, not in the substance of fiqh or positive law.

The analysis shows that, in principle, marital rape is rejected by both legal systems because both are oriented towards protecting human dignity, safety, and well-being. Islamic jurisprudence, through the principles of "*lā ḍarar wa lā ḍirār*" (the right to be protected from harm) and "*mu'āsyarah bil ma'rūf*" (the right to be justified by what is right). This aligns with the TPKS Law, which explicitly criminalizes sexual coercion within marriage, without providing exceptions based on relationship status. This alignment of principles demonstrates that Islamic law and national law both recognize human beings as subjects entitled to physical, psychological, and moral protection. Therefore, sexual coercion cannot be considered part of the normality of marriage, but rather a serious violation of human rights and family values.

The ethical foundations of Islam actually strengthen legal efforts to protect victims of marital rape. Islamic teachings place human dignity as the highest value and demand that all interpersonal relationships, including marital relations, be built on compassion, consent, and respect for bodily integrity. Values such as mercy, justice, and goodness form the moral foundation that not only supports but also strengthens the implementation of

the TPKS Law in the context of Muslim society. Therefore, strengthening the law in cases of sexual violence should not be viewed as a threat to religious teachings, but rather as a manifestation of the actualization of Islamic ethical values in social reality. This harmonization of religious ethics and legal policy is a crucial foundation for building a family culture free from sexual violence and oriented towards the well-being of all parties.

4. CONCLUSION

This research confirms that sexual coercion in marriage, or marital rape, is an act rejected by both Islamic jurisprudence and national law, through the TPKS Law. Although classical fiqh does not recognize this terminology, basic sharia principles such as *lā ḍarar wa lā ḍirār*, *ḥifẓ al-nafs*, and *mu'āsyarah bil ma'rūf* demonstrate a firm rejection of all forms of violence and coercion in marital relations. The TPKS Law strengthens this protection through a formal legal approach that places consent as a central element in sexual relations. The harmonization of these two legal systems demonstrates that the core problem is not a contradiction between fiqh and positive law, but rather a biased interpretation of society, which remains rooted in patriarchal understanding.

Furthermore, this research emphasizes that protection for victims of marital rape can only be achieved if religious, legal, and public policy approaches work synergistically. Reinterpreting Islamic jurisprudence (fiqh) from a *maqāṣid* perspective needs to be mainstreamed in religious education so that narratives of justice and protecting women's dignity become dominant in public discourse. At the same time, the state must strengthen the capacity of its authorities, provide a safe platform for complaints, and ensure comprehensive recovery services for victims. By integrating Islamic ethical values and modern legal instruments, efforts to prevent and address marital rape can be more effective, just, and reflect respect for human dignity as the primary goal of law and religion.

References

- Abdul Kodir, F. (2019). *Qira'ah Mubadalah*. Yogyakarta: IRCiSoD.
- Al-Ghazālī. (2004). *Iḥyā' 'Ulūm al-Dīn* (Vol. 2). Beirut: Dār al-Ma'rifah.
- Al-Kāsānī. (2003). *Badā'i' al-Ṣanā'i' fī Tartīb al-Syarā'i'* (Vol. 2). Beirut: Dār al-Kutub al-'Ilmiyyah.
- Al-Nawawī. (1996). *Al-Majmū' Sharḥ al-Muhadhdhab* (Vol. 16). Beirut: Dār al-Fikr.
- Al-Qaradawī, Y. (1997). *Al-Halāl wa al-Ḥarām fī al-Islām*. Cairo: al-Risālah.
- Al-Qurṭubī. (2003). *Al-Jāmi' li Aḥkām al-Qur'ān* (Vol. 5). Beirut: Dār al-Kutub al-'Ilmiyyah.
- Al-Zuḥaylī, W. (2016). *Tafsīr al-Munīr* (Vol. 4).
- Herman, J. (1992). *Trauma and Recovery*. New York: Basic Books.
- Kementerian Pemberdayaan Perempuan dan Perlindungan Anak. (2022). *Panduan Layanan Terpadu Korban Kekerasan Seksual*.
- Komnas Perempuan. (2014). *Catatan Tahunan (CATAHU) Kekerasan terhadap Perempuan 2014*. Komisi Nasional Anti Kekerasan terhadap Perempuan.
- Komnas Perempuan. (2023). *CATAHU 2023*. Jakarta: Komnas Perempuan.
- Muhammad, H. (2002). *Fiqh Perempuan*. Yogyakarta: LKiS.
- Rahman, F. (1982). *Islam and Modernity*. Chicago: University of Chicago Press.

- Republik Indonesia. (2004). Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan dalam Rumah Tangga.
- Republik Indonesia. (2022). Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual.
- Ritonga, A. R., Education, I. R., Zein, A., Syam, A. M., & Ohorella, N. R. (2023). Misconceptions of Jihad: A Constructivist Review of the Meaning of Struggle in Islam in the Modern Era: Analysis of the verses al-Amwaal wa al-Nafs
- Rusdi, M., Sebayang, V.A., Kholil, S., & Syam, A.M. (2024). Islam and the Ethics of War: Deconstructing Jihad through the Principle of Humanism in Theological Discourses
- Rouf, A. (2022). Breast milk bank laws in the perspective of the kaidah fikih dar'al-mafāsīd muqadam a'lā jalb al-mashālih. *Media Syari'ah: Wahana Kajian Hukum Islam dan Pranata Sosial*, 24(1), 112–131.
- Siregar, RH & Syam, AM. (2025). Dynamics of Chinese Muslim Development in Medan City, 1965-1998. *Riwayat: Educational Journal of History and Humanities* 8 (1), 773-781
- Shihab, Q. (2007). *Wawasan Al-Qur'an*. Jakarta: Lentera Hati.
- Shihab, Q. (2012). *Perempuan: Dari Cinta sampai Seks, dari Nikah Mut'ah sampai Nikah Sunnah*. Jakarta: Lentera Hati.
- Suryani, L. P. (2015). *Kekerasan dalam Rumah Tangga di Bali*. Denpasar: Udayana University Press.
- Syam, AM., Dalimunthe, MA., Suhendar, A & Rambe, RFAK. (2024). Islamic Philosophy: A Comparative Perspective Between Ibnu Khaldun And Karl Marx. *SYAHADAT: Journal of Islamic Studies* 1 (2), 55-72
- Zaydān, A. K. (1993). *Al-Mufasssal fī Ahkām al-Mar'ah* (Vol. 7). Baghdad: Maktabah al-Quds.