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The Development of Marital Rape in Islamic Family Law Reform

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Abstract:

Marriage is a sacred bond that governs the relationship between husband and wife based on love, affection, and mutual respect. However, in practice, domestic violence often occurs, one of which is sexual violence in the form of marital rape. This research aims to examine the development of understanding of marital rape in the context of Islamic family law reform. This research uses a qualitative method with a normative juridical approach, utilizing data from literature, books, journals, and relevant articles. The research results show that changes in Islamic family law regarding marital rape through a moderate Islamic legal perspective, which is responsive to the times, can support the eradication of sexual violence within marriage. In addition, legal developments in Indonesia are now beginning to recognize marital rape as a criminal offense, providing stronger protection for victims. This research is expected to contribute to strengthening legal and social awareness regarding the importance of justice and protection for women in domestic life.

Keywords: Marital rape; Islamic Family Law; Legal Reform

A. INTRODUCTION

Marital rape, or spousal rape, refers to the act of sexual violence committed by a husband against his wife without consent or through coercion. This issue has become very controversial and requires serious attention, both in legal and Islamic studies. As a form of sexual violence within marriage, marital rape is often not recognized or even considered taboo in many societies (Siburian, 2020), especially in societies that prioritize patriarchal culture. In Islamic teachings, the relationship between husband and wife should be based on the principles of love, affection, and mutual respect, not coercion or violence. Therefore, it is important to explore how Islamic thought can evolve to address the issue of marital rape more fairly and by the principles of justice contained in Islamic teachings.

As legal thought evolves, both at the international level and within the framework of Islamic law, it becomes increasingly clear that marital rape is a serious violation of human rights and a form of violence that harms women. In the context of

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Islamic family law, this issue has sparked a profound debate between tradition, Sharia law, and the evolving values of social justice in modern society. This debate highlights the importance of revisiting the interpretation of Islamic law in addressing the challenges of domestic violence, particularly those related to sexual violence within marriage.

This article aims to trace the development of the understanding of marital rape within the framework of Islamic family law reform, which includes the shift from pre-Islamic traditions, the arrival of Islam, and classical jurisprudence, to the codification of laws increasingly adapted to the dynamics of modern society. In this study, it is emphasized that Islam, as a religion that brings renewal, aims to create a marriage relationship that is fair, balanced, and full of respect for women's rights. In line with this, in Indonesia, legal reforms reflected in laws such as the Domestic Violence Prevention Law (UU PKDRT) and the Sexual Violence Crime Law (UU TPKS) have become significant steps in providing legal protection for women, including those who are victims of marital rape.

By integrating a moderate Islamic perspective that is responsive to the times and adopting modern legal principles, this article aims to strengthen the understanding that marital rape is a form of injustice that must be eradicated, both normatively and in everyday practice. This step is in line with efforts to realize a family that is *sakinah, mawaddah, and rahmah*, as taught in Islam. Thus, the renewal of Islamic family law is not limited to legal aspects but also includes the application of values that respect the dignity and rights of women in household life.

B. METHOD

The type of research used by the author is qualitative research. This research addresses issues requiring an in-depth understanding within a specific time and context. In this case, qualitative research is used to examine the issue of marital rape from the perspective of Islamic law. This research is of a library research nature, where the author utilizes relevant literature as the main material. The literature review allows the researcher to demonstrate a deep understanding of various relevant literary sources. The data collection techniques used include primary data, secondary data, as well as internet searching, such as research from websites, books, magazines, and other research results that can be accessed online and are relevant to the topic of marital rape. The approach used is the normative juridical approach. The juridical approach focuses on legal analysis sourced from legislation, while the normative approach refers to views derived from the Qur'an and the Sunnah of the Prophet.

C. RESULTS AND DISCUSSION

1) Marital rape: Oppression Against Women in the Household

Terminologically, marital rape comes from English, where "marital" means related to marriage, and "rape" means sexual assault (Samsudin, 2010). According to Elli Nur Hasbianto, marital rape includes violence committed by the husband against the wife in the form of coercion to engage in intimate relations, coercion to fulfill the husband's desires, and coercion that disregards the wife's satisfaction (Samsudin, 2010).

Meanwhile, Farha Ciciek classifies marital rape into three categories: coercion of sexual relations when the wife is not ready, spousal relations accompanied by torture, and coercion of sexual activities in ways that the wife does not desire (Ridho, 2020).

From these definitions, it can be concluded that sexual violence within marriage is an act of violence committed by the husband against the wife, in the form of forcing sexual relations without considering the wife's condition, which can cause serious physical and psychological impacts (Ari & Jaya, 2019). In a modern perspective, this violence is known as marital rape (Martyana, 2022). Marital rape has a pattern reflected in three different forms (Susila, 2013):

1. **Battering Rape:** This type of rape involves sexual violence accompanied by physical violence. In this case, the husband not only forces his wife to have sexual intercourse but also inflicts physical harm, such as beating or torturing. The wife becomes a victim who suffers both physically and emotionally because she is forced to engage in intimate relations in an unprepared state.
2. **Force-only Rape:** This type of rape occurs when the husband uses force to compel the wife to have sexual intercourse, without involving excessive physical violence. Although it is not always accompanied by beatings, there is a possibility of physical violence occurring if the wife refuses. The main focus in force-only rape is on coercion through physical strength, without any more extreme torture.
3. **Obsessive Rape:** This type of rape is characterized by more extreme and deviant behavior, often referred to as "sadistic" or "obsessive" rape. In this form, rape involves more intense physical torture as well as deviant behavior from the husband towards the wife. Physical violence in this context is often accompanied by psychological elements that worsen the situation for the victim.

These three forms of rape illustrate that the coercion of sexual relations in the context of the household is a violation of the wife's rights because biological needs are also a right that women possess. In situations where sexual relations are conducted with coercion, there is an imbalance in the husband-wife relationship, where only the husband enjoys the activity, while the wife not only loses the right to enjoy intimate relations but also potentially suffers deep physical and emotional wounds (Sari & Ridho, 2023). Such coercion destroys the essence of intimacy that should be built on mutual understanding and consent, and eliminates the sense of safety and trust in the relationship, ultimately making the wife feel oppressed, hurt, and marginalized in the household (Ghozi & Dkk, 2002).

2) Marital rape: Oppression Against Women in the Household

Marital rape is a controversial issue that is often considered taboo in society. There are two conflicting views regarding whether marital rape can be categorized as rape. The first party argues that there is no term for rape in the sexual relationship between husband and wife because the wife must serve the husband's biological needs as part of the marriage (Siburian, 2020). Conversely, the second party argues that marital rape can occur within marriage, especially in developing countries with a strong patriarchal culture, such as India, where women often become victims (Deosthali et al., 2021). There are three main factors underlying the occurrence of marital rape (Syaifuddin, 2018):

a. Patriarchal Culture.

In the patriarchal social system, men occupy a higher position than women and have the power to control various aspects of women's lives. This patriarchal culture influences almost every layer of society, where tribes, customs, and religions often support male dominance (Fakhria & Zahara, 2021). In the context of marriage, the husband is often seen as the controller of the wife, so the violence committed by the husband in fulfilling his role is often considered normal and must be respected. As a result, women are expected to ignore their feelings to maintain the integrity and harmony of the household (Qodarusman, 2021). Marital rape often occurs due to cultural views that consider husbands entitled to do anything to their wives, while wives are expected to submit to their husbands. This view traps many women in situations of sexual violence without reporting it, because they consider the act not to be a crime, and that wives should obey their husbands' desires (Erlytawati, 2015).

b. Misunderstanding of religious teachings.

Building a household through marriage is the only legitimate way in Islam to fulfill biological needs and realize one of the *maqashid sharia*, namely *hifzh al-nasl* (Ahmad Atabik & Mudhiyah, 2014). Marriage between husband and wife has a transcendental value based on the willingness and agreement of both parties. However, in the understanding of some people, a woman's role as a wife is often perceived as an obligation to fulfill her husband's desires, including in terms of sexual relations (Martyana, 2022). A wife's refusal of her husband's desires is often considered a grave sin, with this view frequently linked to religious teachings. A textual understanding of the hadith that mentions the angels' curse on a wife who refuses to fulfill her husband's desires reinforces the notion that serving the husband is the wife's duty, without considering the wife's condition or feelings. Wives are expected to always be ready to serve their husbands anytime and anywhere (Hannah, 2017).

In classical fiqh, discussions about sexual relations between husband and wife place more emphasis on the husband's rights that must be fulfilled by the wife, as well as the wife's obligation to meet the husband's needs. Even in some discussions, if the wife refuses to serve her husband, she is considered *nusyuz* and the husband has the right not to provide maintenance. There is also a fatwa that allows a husband to force his wife to have sexual relations without her consent, even through acts of violence (Darussamin & Armansyah, 2019). Understanding this only reinforces the monopoly of the husband's rights over the wife and legitimizes the husband's superiority, while neglecting the wife's rights (Waliko, 2013).

c. The imbalance of power relations within the household.

The imbalance of power relations between men and women is often legitimized by social, religious, legal, and state factors, thus becoming a norm accepted through generations (Dalem, 2012). There is a clear dichotomy between domestic and public roles, which causes women to lose the freedom to move freely like men. The hegemony of men as the primary breadwinners and heads of the family, while wives are expected to perform domestic and reproductive tasks, further reinforces the imbalance of roles between the two (Aisyah, 2013). This condition implies that women are expected to obey and respect their husbands in everything, which further exacerbates the injustice in gender relations. This inequality creates tension in marital relationships, often leading

to forms of oppression, such as marital rape, which go undetected or are considered normal within the dynamics of husband-wife relationships.

3) Islam and the Reform of Women's Status in Family Law

Before Islam arrived, women lived under pressure and discrimination, considered inferior and without rights. Islam brought significant changes, elevating women's dignity, granting them equal rights to men, and establishing husband-wife relationships based on love and mutual respect. Here is a comparison of the condition of women before and after Islam:

Table 1. Comparison of Women's Status and Rights Before and After Islam

Aspect	Condition Before Islam	Condition After Islam
Women's Status	Viewed as inferior, considered property to be bought and sold (Zakaria, 2021), as well as a disgrace and burden (Mahdi et al., 2020).	Recognized as individuals equal to men, with the same rights and obligations.
Women's Rights	Did not have rights over themselves, and considered property to be inherited (Izzah et al., 2022).	Gained rights over themselves, including inheritance rights, property ownership, and legal protection.
Family System	The husband held full power, wife was considered like property.	Husband-wife relationship is based on love, affection, and cooperation, not domination (Januario et al., 2022).
Marriage Relationship	Dominated by the husband, with no respect for the wife's feelings (Adinugraha et al., 2018).	Relationships are based on mutual respect, justice, and protection.
Rights in Sexual Relations	A woman had no right to refuse her husband's request, considered a biological need satisfier (Azizah, 2020).	Women are respected, husband-wife relationship is based on willingness and harmony.
Rights over Husband	No rights, even after the husband passed away (Usman & Yunta, 2020).	Entitled to love, both material and emotional support, and fair treatment if the husband has more than one wife.
Role in the Family	Not respected, only seen as an accessory.	Recognized as an equal partner in building the family, receiving appreciation and love.
Social Treatment	Often becomes an object of discrimination and human trafficking.	Protected from discrimination, and regarded as dignified individuals with full rights in society.

Source: author

Based on the table, it can be understood that the status and rights of women underwent significant changes after the arrival of Islam. Before Islam, women were looked down upon, did not have rights over themselves, and were considered property that could be inherited. The husband held full power in the family, and women had no

right to refuse sexual relations. In marital relationships, women are considered to be the fulfillers of biological needs without respect for their feelings. In the social aspect, women often become objects of discrimination and human trafficking. After Islam, women were recognized as equal to men, possessing the same rights and obligations, including the right to themselves, inheritance rights, property ownership, and legal protection. The family system changed to be based on love, affection, and cooperation, with husbands and wives respecting each other and working together to build a family. Islam also recognizes women's right to refuse sexual relations, as well as protecting women's rights in marriage and social life, making women respected individuals and protected from discrimination.

4) Marital rape in Islamic Reform in Family Law

The arrival of Islam brought by Prophet Muhammad into Arab society in the 7th century was a major reform that drastically changed the lifestyle of the community. Amid a society that tended to neglect humanitarian values (Supriyadi, 2016), Islam arrived with provisions outlined in the Qur'an and hadith as a reform that touched various aspects of life. In a short period, Islam succeeded in transforming society from a barbaric way of life to a more civilized one (Azhari, 2021). One important aspect of this reform can be found in the field of family law, which is an integral part of the social system transformed by Islam.

In the pre-Islamic era, the family and social systems were heavily dominated by patriarchy, where men held a more dominant position compared to women. Islam changed this system by emphasizing the balance of rights and obligations between men and women. The previously patriarchal family system transformed into a more balanced one (bilateral or parental), meaning that both men and women have equal rights to reach their full potential. Additionally, the social system, which was once hierarchical and rigid, also became more egalitarian, where every individual is viewed as having equal status, regardless of social status or gender (Nasution, 2007).

The reforms brought by Islam did not immediately abolish all the customs of pre-Islamic society but rather replaced them with new values that were more in line with Sharia. Some customs were even perfected and directed towards matters that were more in line with the welfare of humanity. Moreover, not all reforms were implemented at once; some reforms were carried out gradually, starting from the Prophetic era and continuing at the appropriate time, when the old laws were deemed no longer suitable for the circumstances and needs of society. Family law is one of the fields that has undergone this gradual reform. This is evidenced by the existence of family law provisions in Islam that still contain patriarchal elements, which need to be reviewed and examined further in line with the times to achieve the welfare of the community (Nasution, 2007).

Islamic reform in the field of family law is an important issue that requires serious attention, especially in the context of understanding and practicing family law today. Islamic reform on marital rape can be understood through five stages, namely:

a. Marital rape in pre-Islamic *jahiliyah* tradition.

In the pre-Islamic *jahiliyah* tradition, women were often positioned as objects who had no rights over their bodies and honor. In the context of marriage, the husband-wife

relationship was based on domination, not mutual respect or love. The husband has full control over his wife, including in matters of sexual relations, which means the wife has no right to refuse or regulate sexual relations, even in physical or emotional conditions that are not conducive. The husband's biological needs are considered more important, while the wife's needs are often neglected.

During this period, marital rape was considered normal, as the wife was seen as the property of the husband, who could impose sexual desires without considering the wife's feelings or circumstances. This reflects the inequality in the husband-wife relationship, where the wife was treated as an object for satisfying desires, rather than as an individual with equal will and rights. Furthermore, women who experience sexual violence within marriage have no space to seek justice, due to the social stigma against women who are considered "disobedient" or "rebellious" towards their husbands. This situation creates a cycle of violence that is difficult to break, where women feel trapped and are forced to accept such treatment as part of their lives. Marital rape at this time is not only an act of violence but also a manifestation of the patriarchal system that places women in a very vulnerable and powerless position.

b. Marital rape at the arrival of Islam.

The arrival of Islam brought fundamental changes in social structure and gender relations, especially in the context of marriage. Islam teaches that a husband should not impose his will on his wife. A wife has the right to refuse sexual relations if she feels uncomfortable. This shows that Islam directly abolishes the practice of marital rape, which was previously considered acceptable in jahiliyah society.

Islam recognizes women's rights to determine when and how sexual relations are conducted and protects women against sexual violence within marriage. Islam emphasizes the importance of mutual respect in the husband-wife relationship, teaching husbands to be patient and understand their wives' emotions. The husband is not just a ruler, but also a partner responsible for creating a safe and harmonious environment. Thus, Islam provides an equal position for women in the husband-wife relationship, which creates a foundation for a healthy, mutually supportive, and love-based relationship. At this time, the term "marital rape" was not explicitly known. However, the practice of sexual violence within marriage still occurs, even though this concept has been abolished in Islamic teachings that emphasize love and mutual respect between husband and wife.

c. Marital rape in classical fiqh.

In classical fiqh literature, the term "marital rape" is not found, because this concept contradicts the social norms of Arab society at that time. However, in Arabic terminology, there is the term الإغتصاب الزوجي which refers to the act of sexual intercourse performed with coercion against a partner. The word *al-ightshab* itself comes from the word "rape" in English, which means to sexually assault a woman or to engage in sexual relations by force. Meanwhile, *al-zaujiy* is related to marriage or marital relationships. As time goes by, this term has become increasingly popular among contemporary fiqh scholars, one of whom is Sufyan 'Abdali, who defines marital rape as a sexual relationship conducted with a spouse without their consent (Darussamin & Armansyah, 2019).

Besides *Al-Ightshab Al-Zaujiy*, there is also another term used to refer to marital rape, which is الإكراه الزوجي. *Al-Ikrah* in this context refers to an invitation to perform an action accompanied by a threat. According to this definition, threats in sexual relations accompanied by coercion have three main conditions: first, the perpetrator has the power to carry out the threat and the victim is unable to refuse; second, there is a strong belief that refusal will result in the threat occurring; and third, the threat involves dangerous actions such as murder or beating (Zainuddin Ahmad bin Abdul Aziz, n.d.).

In the classical fiqh era, the concept of marital rape had not yet become a thoroughly discussed issue. The relationship between husband and wife at that time placed more emphasis on the husband's rights that the wife had to fulfill (Fakhria & Zahara, 2021). The refusal of marital relations by the wife is closely related to the concept of *nusyuz*, which can result in the husband's obligation to provide mahr and maintenance being nullified (Hamidah, 2011). In some views, husbands are allowed to force and even hit wives who refuse to have sexual relations (Darussamin & Armansyah, 2019). However, despite this, no claim explicitly states that a wife can be forced to have intercourse.

The view of the Hanafiyah school states that the right to sexual relations belongs to the husband, not the wife, and the husband is allowed to force the wife to engage in sexual relations. Some other fiqh scholars also state that the husband has the right to force the wife to have sexual relations without her consent, except if the wife's refusal is due to a legitimate excuse such as menstruation, postpartum bleeding, fasting during Ramadan, being in a dangerous illness, or the husband requesting deviant sexual relations (Darussamin & Armansyah, 2019). Thus, at that time, the fulfillment of a wife's rights in sexual relations was often neglected due to the interpretation of hadiths that emphasized the husband's needs more.

In classical fiqh, marital rape had not yet become a significant topic, as the main focus was on the wife's obligation to fulfill the husband's rights. The concept of *nusyuz* and the permissibility of forcing a wife to have sexual relations without her consent were the main issues at that time. However, recent developments with the definitions of *Al-Ightshab Al-Zaujiy* and *Al-Ikrah Al-Zaujiy* highlight the importance of recognizing the rights of wives in marital relationships.

d. The codification stage of marital rape.

Marital rape was first mentioned in Indonesian legislation through Law No. 23 of 2004 on the Elimination of Domestic Violence (Law on the Elimination of Domestic Violence) or Penghapusan Kekerasan dalam Rumah Tangga (UU PKDRT) (Fitriyah, 2023). In Article 1 of the Domestic Violence Eradication Law (UU PKDRT), it is explained that domestic violence is any act against a person, especially women, that results in physical, sexual, or psychological suffering, and/or neglect within the household, including threats to commit acts, coercion, or unlawful deprivation of freedom within the household (Pemerintah Pusat Indonesia, 2004).

Generally, the UU PKDRT does not explicitly regulate marital rape, as the victims of violence are not only focused on wives but also involve other family members. This is stated in Article 2 of the Domestic Violence Law, which mentions that the scope of domestic violence includes husbands, wives, children, and family members related by blood, marriage, breastfeeding, caregiving, and guardianship. Thus, Article 2 does not

specifically focus on violence against wives. However, the Domestic Violence Law still provides legal protection for victims of domestic violence, including sexual violence, which is regulated in Article 44 regarding physical violence, Article 45 regarding psychological violence, and Articles 46 and 47 regarding sexual violence. The criminal sanctions stipulated in this law include imprisonment for up to 15 years or a fine of up to Rp 500,000,000 (Pemerintah Pusat Indonesia, 2004).

In addition to the Domestic Violence Law (UU PKDRT), there is also the Criminal Code (KUHP) which regulates sexual violence in Article 285, stating that sexual violence against women who are not lawful wives is classified as rape. Unfortunately, this article does not cover the coercion of sexual relations with a wife, so acts of marital rape cannot be prosecuted under this article. As a result, although the UU PKDRT and Article 285 of the KUHP provide legal protection for victims of domestic violence, there is still a legal gap regarding marital rape. If a wife reports her husband forcing her to have sexual intercourse without consent, the report will be processed as an assault crime based on Articles 351, 354, and 356 of the KUHP.

Nevertheless, the existence of the UU PKDRT and the KUHP has made significant contributions to providing legal protection for victims of domestic violence, even though there are no explicit regulations regarding marital rape. The UU PKDRT also plays a role in changing the public's perception that domestic violence is not merely a private matter, but requires external intervention to provide justice for the victims (Hadikusuma, 2007). With this legal protection, it is hoped that victims of marital rape will no longer feel ashamed to report and seek help from the authorities (Suryanti, 2023).

e. Marital rape amendment stage.

The rate of violence against women and children in Indonesia continues to increase (Rahayu, 2021), on April 12, 2022, the People's Consultative Assembly (DPR) passed the Draft Law on Sexual Violence Crimes (RUU TPKS) into law (Ramadhan & Erdianto, 2021). UU TPKS is expected to serve as a legal umbrella that protects victims of sexual violence, both within and outside of marriage.

Article 1 number 1 of the TPKS Law states that sexual violence is any act that is physical and non-physical directed towards the body and/or reproductive functions forcibly, with threats, deceit, or seduction that results in physical, psychological, sexual suffering, and economic loss. The TPKS Law expands the scope of sexual violence, covering a wider variety of sexual violence compared to the PKDRT Law. In Article 4, paragraph (2), letter (h), the TPKS Law includes sexual violence within the household. Although the regulation regarding husband-to-wife rape has not been explicitly explained. This article only states that the provisions on domestic sexual violence are already clear enough without the need for additional emphasis (Pemerintah Pusat Indonesia, 2022). However, returning to the essence of the article, the regulation regarding a husband's rape of his wife is not explained explicitly. In the explanation of the article, it is stated that Article 4 in each paragraph is "clear enough." It does not require an emphasized explanation because each paragraph and its letters are sufficiently clear. Therefore, based on this, it can be concluded that sexual violence within the household context is still considered general (Fitriyah, 2023).

Nevertheless, the TPKS Law provides new protection for victims of domestic violence by classifying sexual violence as a criminal offense. This is stated in Article 6

letter b, which mentions that anyone who commits sexual acts directed at the body, sexual desire, and/or reproductive organs with the intent to unlawfully control someone, whether within or outside of marriage, can be sentenced to a maximum of 12 (twelve) years in prison and/or a fine of up to Rp 300,000,000 (three hundred million rupiah) (Pemerintah Pusat Indonesia, 2022).

The amendment to the KUHP also includes marital rape, which is regulated in Article 473 of Law Number 1 of 2023. This article states that marital rape is recognized as a criminal offense if committed with violence, threats of violence, or identity deception. The text of Article 473 of Law 1/2023 is as follows: (1) Any person who, with violence or the threat of violence, forces someone to have sexual intercourse with them, will be punished for committing rape, with a prison sentence of up to 12 (twelve) years. (2) The act of rape referred to in paragraph (1) also includes actions such as a sexual intercourse with someone who consents, because that person believes that the partner is their legitimate husband/wife. Article 473 serves as a more stringent legal basis for victims of marital rape, as stated in the Criminal Code, particularly in paragraph 2, which recognizes marital rape as a criminal offense if committed with violence or the threat of violence, or through identity deception (Djafri & Munawir, 2024).

Thus, this amendment stage, through Law No. 12 of 2022 on the Crime of Sexual Violence (UU TPKS) and Law No. 1 of 2023 on the KUHP, fills the legal gaps present in the codification stage. These two laws provide more comprehensive protection for victims of sexual violence, including marital rape, and reflect a renewal in the legal perspective on domestic sexual violence. To facilitate understanding, it can be seen from the following table:

Table 2. Development of Islamic Family Law on Marital Rape

Stages	Historical Context	Main Characteristics	Changes and Implications
Pre-Islamic Jahiliyah Tradition	Period before the emergence of Islam, dominant patriarchal culture.	<ul style="list-style-type: none"> - Women were considered objects, without rights over their bodies. - Marital rape was considered normal. - There was no legal protection or justice for women. 	<ul style="list-style-type: none"> - Relationships were dominated by husbands. - Women were vulnerable to sexual violence without any mechanisms for protection or justice.
The Arrival of Islam	Islam came with teachings of love, compassion, and respect in the husband-wife relationship.	<ul style="list-style-type: none"> - Islam emphasizes that a wife has the right to refuse sexual relations. - It teaches a relationship based on love and mutual respect. - There is no explicit term for marital rape, but Islamic teachings reject violence in marriage. 	<ul style="list-style-type: none"> - The position of women began to be recognized as equal. - The practice of sexual violence gradually diminished in the Islamic perspective.

Classical Fiqh	Period of development of traditional Islamic law, focusing on the social norms of the time.	<ul style="list-style-type: none"> - The term "marital rape" is not found. - Sexual rights are considered the husband's. - The wife is obliged to fulfill the husband's rights, except in certain circumstances (menstruation, illness, etc.). - Hadith interpretations tend to emphasize the wife's obligations. 	<ul style="list-style-type: none"> - More focus on the husband's rights than the wife's rights. - Sexual violence has not yet been recognized as a significant issue in classical fiqh.
Codification Stage	Laws began to be codified into legislation in Indonesia	<ul style="list-style-type: none"> - The Domestic Violence Law / UU TPKS (2004): Regulates domestic violence but does not explicitly include marital rape. - The Criminal Code (KUHP) Article 285: Sexual violence is defined but does not cover sexual coercion against a wife. 	<ul style="list-style-type: none"> - Provides basic legal protection against sexual violence, but does not specifically protect victims of marital rape.
Amendment Stage	Legal changes to explicitly include sexual violence within marriage.	<ul style="list-style-type: none"> - TPKS Law (2022): Regulates sexual violence, including in households. - Criminal Code No. 1/2023 Article 473: Marital rape is recognized as a crime with a maximum penalty of 12 years in prison. 	<ul style="list-style-type: none"> - Provides stronger protection for victims of marital rape. - Explicit recognition of marital rape as a crime.

Source: author

Based on the table, it can be understood that the reform of Islamic family law based on equality and justice, which protects women, especially regarding sexual violence in marriage, has developed gradually over time. In the pre-Islamic period, women did not have rights over their bodies and marital rape was considered normal. Islam then brought about change by teaching relationships based on love and respect, even though the term marital rape did not yet exist. In classical jurisprudence, the husband's rights were more dominant, and sexual violence within marriage had not yet been recognized as an important issue. Over time, Indonesian law began to regulate domestic violence, although it did not explicitly include marital rape. Until the amendment stage, with the TPKS Law (2022) and the Criminal Code No. 1/2023, marital rape is recognized as a criminal offense, providing stronger legal protection for victims. This journey shows that the reform of Islamic family law has undergone significant

changes related to the increasing legal and social awareness of the importance of protecting women in marriage.

5) Marital rape in the Perspective of Islam

Islam came to eliminate the practice of injustice in various social relationships, including the husband-wife relationship. In Islamic law, rape is a serious crime that violates honor and individual rights. Islam emphasizes the importance of consent and willingness in sexual relations. Here are some important principles in Islamic law related to marital rape:

a. The relationship between husband and wife in Islam is considered an act of worship.

The relationship between husband and wife in Islam is not merely a fulfillment of biological needs but is viewed as a form of worship for various reasons, including preventing falling into the sin of adultery. The value of worship will be more perfect when done with sincerity and willingness (Samsudin, 2010). Therefore, the husband-wife relationship, which is supposed to be an act of worship, will lose its meaning if it is accompanied by coercion or violence in practice, as this constitutes oppression that undermines the essence of that worship. In addition, the relationship between husband and wife is also considered a form of charity and kindness. Therefore, in doing so, husband and wife are required to be polite, avoiding coercion or the use of inappropriate words. Someone who gives charity certainly strives to do it as well as possible to earn rewards, just like in the relationship between husband and wife.

b. *Mu'asyarah bil ma'ruf* (associating in a proper manner).

Islam teaches that husbands and wives should interact in a good manner, fulfilling each other's rights and obligations, including in sexual relations (Hilmi, 2023). Husbands and wives are obliged to fulfill each other's rights and obligations according to their roles. It is important to understand that the position of husband and wife in the household is equal, even though their rights and obligations differ. Good treatment or *mu'asyarah bil ma'ruf* is a mutual right that must be upheld (Muharromi F. A, 2021). A wife is obliged to serve her husband, but if the wife is not in a condition to serve, she has the right to postpone or refuse. If the husband insists, then he has violated the principle of *mu'asyarah bil ma'ruf* by committing an injustice against the party that should be protected (Zakiah et al., 2023).

c. The husband focuses on biological needs and the wife on psychological needs.

Husband and wife have different needs: the husband focuses more on biological needs, while the wife emphasizes psychological needs. The husband is expected to be more sensitive in inviting sexual relations in a gentle and non-coercive manner and to condition himself so that his invitation is well-received by his wife. A relationship conducted with threats or coercion is far from being affectionate and instead causes trauma and reluctance in the future.

The main purpose of physical intimacy in Islam is to strengthen love and affection between husband and wife. Islam also teaches husbands to understand their wives' conditions when they refuse sexual relations because sometimes women lose the desire for intimacy and find it unenjoyable. The decrease or loss of biological desire occurs in both men and women, but women have a greater potential in this regard.

Medically, the decline in biological desire can be caused by two main factors (Heffner & Schust, 2006): (a) Organic causes, such as hormonal decline, chronic diseases, the influence of certain medications, or psychiatric disorders; (b) Psychogenic causes, such as anxiety, anger, negative perceptions of a partner, and traumatic experiences.

1) As subjects, not objects.

In a physical relationship, husband and wife are subjects involved together, not just the husband acting unilaterally. Islam prohibits husbands from treating their wives as objects or in a degrading manner, such as hitting or hurting their wives during the day and then having relations with them at night. Such actions are very much contrary to the humanitarian message brought by Islam, as they treat the wife merely as a slave or a biological satisfaction machine.

2) The *Maslahat* dan the *mudharat* dalam marital rape.

It cannot be denied that marital rape can bring *maslahat* to the continuity of the husband and wife's life, although its *mudharat* are far greater. There are three *maslahat* associated with marital rape:

- a. Coercive relations by a legitimate partner are better than sexual relations with an illegitimate partner. This can be understood considering that men find it harder to control their biological urges compared to women (Nasri & Hamat, 2017).
- b. Marital rape can also prevent partners from engaging in risky sexual relations, as well as prevent the release of lust in dangerous or illegitimate ways (Afrizal & Qodriyyah, 2022).
- c. Maintaining the reputation of polygamy, because there is one condition where the husband threatens the wife who refuses to have sexual relations with polygamy. By complying with the husband's request, the wife can avoid polygamy on the grounds of being unable to serve her husband. Maintaining the reputation of polygamy, because there is one condition, the husband threatens the wife who refuses to have sexual relations with polygamy. By complying with the husband's request, the wife can avoid polygamy by citing her inability to serve the husband. Thus, the purpose of polygamy as a solution to family problems and the preservation of women's and children's rights remains intact (Kalimullah, 2021).

However, the *mudharat* in the form of negative impacts from the coercion of marital relations is more felt by the wife, both medically and psychologically. The medical impacts caused are as follows:

- a. Medical impact: damage or injury to the wife's vital organs. This can be worsened if there is no medical intervention to treat the injuries caused by marital rape (Marlia, 2007). Wives are often reluctant to seek medical treatment due to shame and not wanting others to know about their personal lives. Even if the wife eventually goes to the doctor, she may be hesitant to explain the cause of her injuries due to embarrassment and fear of being considered a domestic issue that should not be known by others (Idrus, 1999).
- b. Psychological impact: fear and trauma towards the marital relationship, even though that relationship is one of the purposes of marriage. If marital rape continues to occur, it can lead to negative attitudes from the victims, such as a lack of self-confidence, self-blame for not being able to satisfy their husband's desires, and

reproductive disorders (such as infertility and menstrual cycle disturbances) due to prolonged stress (Hayati, 2000).

Although marital rape may seem to have *maslahat*, the *mudharat* it causes is far greater. The *maslahat* that arise from marital rape, such as the fulfillment of biological needs with a legitimate partner, can still be postponed until the wife is ready for sexual intercourse. In addition, the benefits that arise also contradict the principle of *mu'asyarah bil ma'ruf* taught by the Qur'an (Afrizal & Qodriyyah, 2022).

D. CONCLUSION

Marital rape is a form of domestic violence that contradicts Islamic teachings regarding consent, respect, and good treatment in marriage. Islamic reform in the field of Family Law has eliminated the practice of Islamic patriarchy since the early arrival of Islam by transforming it into a bilateral system and emphasizing the importance of good treatment in the husband-wife relationship. Although marital rape is a topic discussed at every stage of changing times, the recognition of marital rape as a violation of a wife's rights has only developed in the modern legal era. The codification of law in Indonesia, such as the Domestic Violence Law (UU PKDRT) which was later amended to the Sexual Violence Crime Law (UU TPKS), provides legal protection for victims of sexual violence in the household as a criminal offense. However, in reality, clearer regulations and public awareness campaigns are still needed to change the stigma that considers marital rape a private matter. As a recommendation for further research, it is important to deepen the study on the implementation of existing laws, as well as the need for broader outreach and education on the importance of consent in marital relationships. Further research can focus on efforts to empower women and communities in identifying and addressing the issue of marital rape.

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