

## **AWAKENING WOMEN'S AGENCY THROUGH ORGANIZATIONS**

### **Legal Attitude of Muslim Women Victims of Marital Rape**

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#### **Abstract**

This article sheds light on the legal attitude of Muslim women who have been victims of marital rape. The research data came from an examination of twelve court decisions in Indonesia containing cases of marital rape, completed by interviews. After conducting research, it is safe to say that the attitude of Muslim women who choose to divorce their husbands is a form of independence for these women in order to prevent various forms of sexual violence in their lives. Muslim women who take criminal action by reporting their husbands to the police argue that it has a more significant impact on the perpetrators. This latter option is inextricably linked to advocacy from women's agencies, namely the National Commission on Women, the Office of Women's Empowerment and Child Protection (DP3A), and the Integrated Service for Women and Children (P2TPA).

[Artikel ini mengulas sikap hukum perempuan muslim korban pemerkosaan dalam perkawinan. Data penelitian ini diambil dari analisis dua belas putusan pengadilan di Indonesia yang berisi kasus marital rape, dilengkapi dengan wawancara. Setelah melakukan penelitian, disimpulkan bahwa para perempuan muslim korban pemerkosaan dalam perkawinan yang memilih jalur perdata dengan menggugat cerai suaminya merupakan bentuk independensi perempuan tersebut untuk menghindari diri dari berbagai bentuk

kekerasan seksual. Perempuan muslim korban pemerkosaan dalam perkawinan yang memilih jalur pidana (melaporkan suaminya ke polisi) berdalih memberikan dampak yang lebih signifikan kepada pelaku. Pilihan yang terakhir ini tidak terlepas dari adanya advokasi dari agensi perempuan, yakni: Komnas Perempuan, Dinas Pemberdayaan Perempuan dan Perlindungan Anak (DP3A), dan Pusat Pelayanan Terpadu Perempuan dan Anak (P2TPA).]

### Keywords

Criminal complaint, divorce lawsuit, legal attitude, marital rape

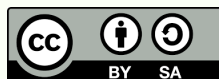
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### Introduction

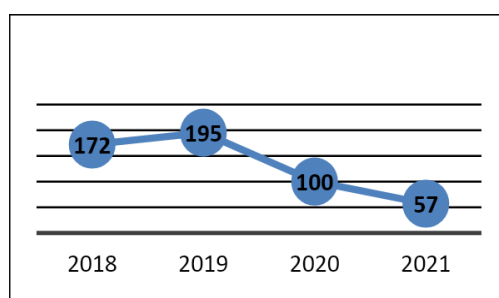
Marital rape is a non-consensual sexual act between a partner, former partner, or long-term intimate partner.<sup>1</sup> These sexual acts include penetration, oral or anal sex, forced sexual behavior with another person, and any non-consensual, unwanted, painful, and

<sup>1</sup> Brendah Nakyazze, Karin Österman, and Kaj Björkqvist, "Sexual Abuse and Accepting Attitudes towards Intimate Partner Rape in Uganda," *Medical Science and Discovery* 5, no. 5 (2018): 211-19, <https://doi.org/10.17546/msd.422907>.

embarrassing sexual activity.<sup>2</sup> Rape like this is also carried out using force, coercion, threats, and even intimidation so that the victim submits to sexual acts.<sup>3</sup>

The Chairperson of the Indonesian National Commission on Violence against Women (Komnas Perempuan), Yentriyani, also agreed that one type of sexual violence was forced sexual intercourse or forced sexual intercourse that one party did not like. When the coercion of sexual relations occurs in the relationship between husband and wife, it is known as coercion or marital rape.<sup>4</sup> Marital rape not only forced sexual intercourse by a husband against his wife but also vice versa, so there is still a possibility that a husband could become a victim. However, the specification of victims who often experience violence is the wife because mostly social construction places wives in lower strata than husbands, therefore wives are more vulnerable to discrimination.<sup>5</sup> By considering the application of patriarchal culture which is still very strong in Indonesia, the authors limit the subject of this research to wives who are victims, not the other way around.

In Indonesia, the act of marital rape can be reported to Komnas Perempuan considering that Komnas Perempuan is a government agency that serves and handles women's cases. At Komnas Perempuan, reports regarding violence against women or violence against wives are collected and published as Komnas Perempuan's Annual Records (CATAHU) which are uploaded to its official website.



**Figure 1:** Marital rape cases reported to Komnas Perempuan by the end of 2021

<sup>2</sup> Nakyzze, Österman, and Björkqvist.

<sup>3</sup> Kersti Ed Yllö and M Torres, *Marital Rape: Consent, Marriage, and Social Change in Global Context*. (Oxford University Press, 2016), <https://doi.org/10.1093/acprof:oso/9780190238360.001.0001>.

<sup>4</sup> Interview with Andy Yentriyani, Chair of the National Commission on Violence Against Women, Menteng, Central Jakarta, January 10, 2022.

<sup>5</sup> Aldila Arumita Sari and R B Sularto, "Kebijakan Formulasi Kekerasan Seksual Terhadap Istri (Marital Rape) Berbasis Keadilan Gender Di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 1, no. 1 (2019): 117–27, <https://doi.org/10.14710/jphi.v1i1.117-127>.

Even though it has decreased, the numbers that occur in the field are predicted to be far greater than the figures above.<sup>6</sup> Figure 1 shows that there are many women who are victims of marital rape in Indonesia. Those number in figure 1 represents a small fraction of the actual number of cases. In dealing with rape in marriage, many women did not involve Komnas Perempuan, but instead took a simpler independent way, namely by filing for a divorce case to the Religious Cort or reporting the case to the police demanding criminal procedure.

Apart from reporting it to Komnas Perempuan, there are other legal actions that can be taken in the facing of marital rape to report it normatively by choosing two provisions of choice of law, namely civil law and criminal law or even both at the same time. Each choice of legal action has different legal consequences. Civil lawsuits have legal consequences for breaking up the marriage between the perpetrator and the victim of marital rape, while a criminal lawsuit has legal consequences in the form of detention of the perpetrator of marital rape in jail.

Bergen and Barnhill, in their research, revealed that the majority of researchers agree that marital rape is an act of violence and abuse of power, in which husbands have tried to establish dominance and control over their wives.<sup>7</sup> The perpetrator is portrayed as a jealous and dominant figure who often views women only as sexual property, so the risk is higher if women deal with men like this.<sup>8</sup> Bergen also revealed that women who were frequently raped by their husbands would be raped at least 20 times or more before the violence ended, and compared to women who were raped by acquaintances, women who were raped by their own partners would be more likely to experience unwanted oral or anal sex.<sup>9</sup>

In another research, Russell found that among married women, rape by a husband or ex-husband was four times more common than rape by another person<sup>10</sup> and three out of four victims chose not to report the case to the Police because the rape was committed by the husband or ex-husband. Of these unreported cases, 77% of them were raped which

<sup>6</sup> Selvina Suryaningsih, "Get to know Marital rape, aka Rape in Marriage," *Coverage* uploaded on Narasi TV #JadiPaham, Jakarta, 17 September 2021.

<sup>7</sup> Tova Band-Winterstein and Hila Avieli, "The Lived Experience of Older Women Who Are Sexually Abused in the Context of Lifelong IPV," *Violence against Women* 28, no. 2 (2022): 443–64, <https://doi.org/10.1177/10778012211000132>.

<sup>8</sup> Raquel Kennedy Bergen and Elizabeth Barnhill, *Marital Rape: New Research and Directions* (Citeseer, 2006).

<sup>9</sup> Bergen and Barnhill.

<sup>10</sup> Patricia Mahoney and Linda Meyer Williams, *Sexual Assault in Marriage: Prevalence, Consequences, and Treatment of Wife Rape* (na, 1998).

was carried out to completion. Another 77% were still attempted rapes and the remaining 75% were sexual assaults.<sup>11</sup> According to Mahoney and Williams, the main reason for the high rate of non-reporting is the social stigma that considers "rape" only to occur outside of marriage.<sup>12</sup> Not only does it occur in American society, the stigma of rape only occurs outside of marriage ties, and it still applies among the majority of Indonesian people. This fact is consistent with what the Chairperson of Komnas Perempuan often says "Our society often assumes that when a person enters a marriage bond, he is considered ready to have sexual intercourse whenever he wants, so rape within the marriage bond is considered taboo and strange."<sup>13</sup> In addition, there is a stereotype of the division of labor between men and women in household life, which causes the wife to be in charge of serving her husband's daily life including serving only his sexual relations, while the husband is considered the main breadwinner, the strongest figure and the most aggressive figure in the family.

There are several studies of marital rape, and the author divides them into two parts. First is marital rape from a legal perspective, such as research by Syaifuddin<sup>14</sup> and Darussamine.<sup>15</sup> Second is marital rape in social practice, such as the research by Sari<sup>16</sup> and Samsudin.<sup>17</sup> Unlike the previous research, this research was conducted to see whether Muslim women who were victims of marital rape have been able to respond or take a legal stand based on existing provisions or legal choices in Indonesia, which will then be analyzed from the perspective of women agency and along with gender approach. This research examines legal responses or attitudes in legal practice in courts, which are confirmed through 12 decisions of the Religious Courts and District Courts as

<sup>11</sup> Callie Marie Rennison, *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000* (US Department of Justice, Office of Justice Programs Washington, DC, 2002).

<sup>12</sup> Mahoney and Williams, *Sexual Assault in Marriage: Prevalence, Consequences, and Treatment of Wife Rape*.

<sup>13</sup> Interview with Andy Yentriyani, Chair of the National Commission on Violence Against Women, Menteng, Central Jakarta, January 10, 2022.

<sup>14</sup> Muhammad Irfan Syaifuddin, "Konsepsi Marital Rape Dalam Fikih Munakahat," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 3, no. 2 (2018): 171–90, <https://doi.org/10.22515/alakam.v3i2.1399>.

<sup>15</sup> Zikri Darussamin and Armansyah Armansyah, "Marital Rape Sebagai Alasan Perceraian Dalam Kajian Maqâshid Syari'ah," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 12, no. 1 (2019): 84–98, <https://doi.org/10.14421/ahwal.2019.12107>; Uswatun Khasanah, "Marital Rape Sebagai Alasan Perceraian Dalam Kajian Mubadalah Faqihuddin Abdul Kodir," *Ary-Syari'ah: Jurnal Hukum Islam* 9, no. 1 (2023): 89–101, <https://doi.org/10.55210/assyarlah.v9i1.884>.

<sup>16</sup> Sari and Sularto, "Kebijakan Formulasi Kekerasan Seksual Terhadap Istri (Marital Rape) Berbasis Keadilan Gender Di Indonesia."

<sup>17</sup> Titin Samsudin, "Marital Rape Sebagai Pelanggaran Hak Asasi Manusia," *Al-Ulum* 10, no. 2 (2010): 339–54.

representatives of the decisions on marital rape in Indonesia by using a gender approach. The discussion in this article begins by discussing legal provisions of marital rape in the study of Islamic law and Indonesian law, then the legal attitude of Muslim women towards marital rape action of civil and criminal decisions, and ends with conclusions.

### **Justifying Marital Rape: Brief Islamic Legal Ethic and Indonesian Law**

Islam never justifies a husband acting cruelly to his wife physically or spiritually, because Islam is a religion that *rahmattan lil alamin* (universal) which propagates egalitarian values,<sup>18</sup> justice, and humanity.<sup>19</sup> On the topic of marriage, Islam has explained the rules in great detail, starting from the purpose of marriage, how to treat a partner properly, and the prohibitions on negative sexual relations. Islam has regulated and limited what can and cannot be done in sexual activity. Islam also teaches concepts *mu'asyarah bil ma'ruf* (to treat wife in good relation) inside or outside the sexual activity of husband and wife. Marital rape is unjustifiable because considered to have violated and violated the rules and recommendations of Islam itself. In some points, marital rape is frequently discussed under the theme of *nusyuz*. *Nusyuz* is an unpleasant condition that can arise from a wife or husband which is reflected in the existence of hatred, disputes, quarrels, and hostility that lead to deprivation which can pose a danger to the family.<sup>20</sup> There is a legal basis for *nusyuz* husband in marriage explained in An-Nisa verse 128 verse 34.

As for the criteria, *nusyuz* for husband is mostly defined as the husband who physically hurts his wife, among others; sexual intercourse with the wife is not good, such as being rude when having intercourse, and having intercourse with the wife through the rectum; the husband is authoritarian; the husband has an arrogant nature; hitting the wife's face; finding fault with the wife; hurt the wife's heart/physical; bring danger in the household; abandoned his wife and carried out the beatings.<sup>21</sup>

<sup>18</sup> Egalitarian is a person's character that is shown through behavior or beliefs about equal rights, achieving welfare and equal opportunities for every individual.

<sup>19</sup> Tri Sulatama Putra, "Pemaksaan Hubungan Seksual Terhadap Istri Dalam UU No 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga (PKDRT)," *Legalite: Jurnal Perundang Undangan Dan Hukum Pidana Islam* 2, no. II (2017): 87–103, <https://doi.org/10.32505/legalite.v2iII.350>.

<sup>20</sup> Shaleh Ghanim, *Jika Suami Istri Berselisib: Bagaimana Mengatasinya*, Gema Insani, Jakarta, 1998.

<sup>21</sup> Aisyah Nurlia, *Nusyuz Suami Terhadap Istri Dalam Perspektif Hukum Islam* (UNIVERSITAS LAMPUNG, 2018).

In terms of *mafsadah* which arises as a result of marital rape namely the physical and mental suffering of a wife who is a victim of this act. It is clear that *mafsadah* is not something to play around with. Therefore, based on *maqasid syariah* for marital rape is an act that is prohibited in Islam and even unlawful because it is carried out accompanied by verbal and physical violence, damaging intimate organs, and intimidation. Marital rape includes acts that hinder *hifz nasl* (protection of lineage) because it can spoil the harmony of the family, and also it can hurt the soul of the victim, and hinder the safe mind due to many negative impacts. Therefore in many cases, marital rape can be used as a reason for divorce even though it is not explicitly stated as one of the clauses legitimated.<sup>22</sup> In Islam, sexual relations between husband and wife must be carried out in a reasonable and appropriate manner, which means the husband must have intercourse with his wife through the vagina instead of through the anus.<sup>23</sup> According to medical, anal intercourse is dangerous for health, as revealed by Fahrial, an Indonesian sexologist expert from the Department of Internal Medicine, University of Indonesia. The dangers of practicing anal sex can increase the risk of exposure to hepatitis B, hepatitis C, HPV, HIV, herpes, simplex, and anal cancer.<sup>24</sup>

Apart from forbidding sexual intercourse through the anus, Islam also forbids husbands from having intercourse with their wives when they are menstruating. This is stated in Al-Baqarah verse 222. Menstruation causes physical and psychological disturbances in women. Physically, blood coming out of the body will cause disturbances in the woman's body because of the pain that often wraps around her stomach due to the contracting uterus. On the other hand, the time of menstruation causes a woman's sexual appetite to decrease greatly. Woman's emotion is often out of control. Sex during menstruation does not give birth to intimate relationships between partners, especially with blood that is always ready to come out. It is a psychological matter for women.<sup>25</sup> Medically, sexual intercourse during menstruation will make women uncomfortable, considering that some women experience excessive pain during menstruation.

<sup>22</sup> Darussamin and Armansyah, "Marital Rape Sebagai Alasan Perceraian Dalam Kajian Maqâshid Syari'ah."

<sup>23</sup> K.H. Husein Muhammad, *Fiqh Perempuan*, ed. Yudi dan Faqihuddin Abdul Kodir, Cet I (Yogyakarta: IRCiSoD, 2019).

<sup>24</sup> "The Dangers of Anal Sex", <https://jakarta.tribunnews.com/2020/01/10/dokter-fakultas-kedokteran-universitas-indonesia-ungkap-bahaya-seks-anal-bagi-kesehatan>, access 05 March 2022.

<sup>25</sup> M Quraish Shihab, *Tafsir Al-Misbab*, Jakarta: Lentera Hati, IV, vol. IX (Jakarta: Lentera Hati, 2005).



In Indonesia, the concept of marital rape is not explicitly recognized under the law, and sexual intercourse between a husband and wife is generally regarded as a private matter within the confines of marriage. Article 285 of the Indonesian Criminal Code criminalizes rape as an act of violence, stating that "any person who by force or threat of violence forces a person of the opposite sex to have sexual intercourse shall be punished by imprisonment for a maximum of 12 years." However, the article does not specifically mention marital rape. However, some scholars agree that marital rape is substantively regulated in the Law on the Elimination of Domestic Violence, Law Number 23 of 2004. Forms of marital rape are regulated in Law Number 23 of 2004 which is stated under the term of sexual violence.<sup>26</sup> Sexual violence as referred to in Article 5 letter (c) includes (1) coercion of sexual relations committed against people who live within the scope of the household, and (2) forcing sexual relations with someone within the scope of the household with another person for commercial purposes and/or certain purposes."<sup>27</sup>

Definitively Indonesian law has acknowledged marital rape as a form of domestic violence. This can be seen from the word "coercion" in the definition of "domestic violence" in Article 1 Paragraph (1), even though the Law on the Elimination of Domestic Sexual Violence does not explicitly state that the above sanctions also apply to acts of marital rape. Marital rape is a complaint offense that must be reported first by the person concerned, then it can be processed legally. Article 53 of the Law on the Elimination of Domestic Violence states: "The crime of sexual violence as referred to in Article 46 committed by a husband against his wife or vice versa is a complaint offense".<sup>28</sup>

### **Muslim Women's Legal Attitude towards Marital Rape: Divorce Lawsuit and Criminal Complain**

This section outlines the legal stance taken by Muslim women victims of marital rape and the reasons for their choice of law, and the factors that influence the choice of law.

<sup>26</sup> Riskyanti Juniver Siburian, "Marital Rape Sebagai Tindak Pidana Dalam RUU-Penghapusan Kekerasan Seksual," *Jurnal Yuridis* 7, no. 1 (2020): 149–69, <https://doi.org/10.35586/jjur.v7i1.1107>.

<sup>27</sup> Siti Aisyah and Lyn Parker, "Problematic Conjugations: Women's Agency, Marriage and Domestic Violence in Indonesia," in *Contestations Over Gender in Asia* (Routledge, 2017), 42–60, <https://doi.org/10.4324/9781315695334-4>.

<sup>28</sup> Linda R Bennett, Sari Andajani-Sutjahjo, and Nurul I Idrus, "Domestic Violence in Nusa Tenggara Barat, Indonesia: Married Women's Definitions and Experiences of Violence in the Home," *The Asia Pacific Journal of Anthropology* 12, no. 2 (2011): 146–63.



### 1. Divorce as an Avoidance Measure of Violence

A divorce is a form of legal response and attitude related to action marital rape experienced by Muslim women. However, most of the victims of marital rape will hide the fact that the background to the divorce is due to the action of marital rape, so they carry out interpretations and wrap it up into "continuous disputes". This happens because of the difficulty in proving and witnessing acts of sexual violence that occur in the relationship between husband and wife. In addition, Muslim women also understand that the Judge will include acts of violence such as marital rape into the "persistent dispute" category in order to become a reason for divorce. In this study, divorce decisions that were granted were more dominant than those that were not granted. This shows that many judges in Indonesia are enlightened, empowered, and have good gender sensitivity. They sense that marital rape is a form of marital violence.<sup>29</sup>

The perspective of those judges can be strengthened by the independence of Muslim women who have been victims of marital rape themselves, which they understand, understand, and are enlightened about, so they can provide adequate arguments and show that they have the courage to get out totally of a marriage that is no longer wanted, and want to avoid violence themselves. In cases of divorce, the independence of the victims is very influential on the choice of law they take, because victims can weigh and think for themselves, so there are not many who need advocacy from others, because the legal impact of divorce only applies between victims and perpetrators marital rape only that their marriage broke up. Usually, this independence arises when someone consciously feels that their rights, values, or life principles have been taken away by others.

In her dissertation, Riyani<sup>30</sup> found that some of the Muslim women who chose to divorce made the divorce in an effort to avoid violence. The victims preferred to divorce rather than have to survive in a marriage where they knew their husbands had committed violence and had affairs with other women.<sup>31</sup> Riyani also revealed the reasons Muslim women being victims of marital rape choose divorce because they already feel bored with

<sup>29</sup> Elli Nur Hayati et al., "Elastic Band Strategy: Women's Lived Experience of Coping with Domestic Violence in Rural Indonesia," *Global Health Action* 6, no. 1 (2013): 18894, <https://doi.org/10.3402/gha.v6i0.18894>.

<sup>30</sup> Irma Riyani, "The Silent Desire: Islam, Women's Sexuality and the Politics of Patriarchy in Indonesia," *University of Western Australia*, 2016.

<sup>31</sup> Riyani.

the actions of their husbands who do not want a divorce but have not changed for the better.<sup>32</sup>

There are also victims of marital rape who chose to divorce because they received sexual violence and psychological violence from their husbands. The husband commits violence and then has an affair with another woman even until the woman is pregnant. In this context divorce is the last resort for the wife in order to not experience double violence, be it sexual, physical, or psychological violence. Especially for the six Muslim women victims of marital rape. In this study, they sued their husbands for divorce because they wanted to get out of a marriage that they no longer wanted and also to avoid violence being repeated. The reason is that they are aware that sexuality is the right of a husband and wife. She feels that she does not get her rights and cannot enjoy her rights, but only carries out her obligations as a wife. Moreover, for those who sued their husbands for divorce, consent is very important in sexual intercourse.

Sex is an important element in realizing the welfare and happiness of the household, so in order to function according to its function, sex should be carried out by means of "two-way communication", which means that sex does not only belong to the husband but also to the wife. Good service must be provided in a balanced way between the two parties.<sup>33</sup> One of the functions of marriage is to fulfill biological needs and desires, That is why Muslim women are victims of marital rape who sue their husbands for divorce because they feel their biological needs were not properly met. As stated by Qibtiyah, Komnas Perempuan Commissioner:

The essence of marriage is to achieve happiness, in which all family members must be happy, so we cannot use marriage like a candle that allows ourselves to be destroyed to illuminate others, as well as the issue of sexuality. A wife cannot only serve sex, but she does not get sexual satisfaction. Based on a progressive moderate understanding, satisfaction, and sexual expression are

<sup>32</sup> Minah (aged 50) also said that when she found out that her husband was having an affair, she asked directly for a divorce. She said she found out where the woman lived, and then when she caught the husband there and she said to the woman, "I am here not to fight over my husband or to take him back. You can have him. I am here just to ask my husband to divorce me. A similar thing happened to Nanda (aged 36), who asked for a divorce from her husband when she found out that her husband had an affair and the woman got pregnant from this affair. See Riyani.

<sup>33</sup> Musdah Mulia, *Ensiklopedia Muslimah Reformis: Pokok-Pokok Pemikiran Untuk Reinterpretasi Dan Aksi*, ed. Penerbit BACA (Tangerang Selatan, 2020).

rights and obligations together, not just the wife's obligations and the husband's rights, or even vice versa.<sup>34</sup>

According to Komnas Perempuan, women who dare to sue their husbands for divorce are those who have an understanding that they have been empowered to get out of the violence they have experienced. This can happen because of the independence of the victim, a Muslim woman, during the marital rape. This independence can come from ongoing socialization or education on issues of sexual violence in marriage, which is carried out by women's institutions or departments such as Komnas Perempuan to help victims. Marital rape becomes more enlightened. This effort is about women's agency, namely empowerment by victims' marital, women for other women, to reject the structure of society which is rooted in patriarchy, which oppresses and makes women powerless. Women's agency can also be done to capture women's interpretation of decision-making, freedom of movement, and gender by attitude scale.<sup>35</sup>

Women's independence in ending marital rape through a divorce can be seen in their unwillingness to accept and experience violence as a gain, and their desire to get out of the marriage, even though they have to become a widow or single parent. Based on the civil verdict in this study, the efforts made by Muslim women to prove they were victims of marital rape included registering a divorce at the local Religious Court, preparing divorce fees, preparing witnesses, and attending every court hearing. Even after the divorce, women are raped and continue their life by earning a living for themselves. Therefore, the legal attitude of Muslim women who choose to divorce is a short-term benefit because the legal impact applies at that time and for personal interests because the impact only applies to themselves and the perpetrator, namely their marriage breaking up. As for the classification, Muslim women as victims of marital rape who sued their husband for divorce (based on biodata in the decision of the Religious Court) is listed in table 1 below.

<sup>34</sup> Interview with Alimatul Qibtyah, Commissioner of the National Commission on Violence Against Women, Banguntapan, Yogyakarta, 30 January 2022.

<sup>35</sup> “*Women’s empowerment can be defined to promoting women’s sense of self-worth, their ability to determine their own choices and their right to influence social change for themselves and others*”. Look <https://www.worldvision.com.au/womens-empowerment/>, access January 24, 2023.

**Table 1:** Sample of Muslim women as victims of marital rape who sued for divorce

No	Age	Work	Education	Child	Status
1	28 years	IRT	Senior High School	2	Granted
2	49 years	IRT	-	2	Granted
3	25 years	Employee	Junior High School	-	Granted
4	-	-	-	1	Granted
5	-	IRT	-	2	Granted
6	45 years	Self-employed	Senior High School	4	Rejected

From table 1 above, it could be seen that the response of Muslim women who sue their husbands for divorce is not related to education at all. Those with low education do not mean they do not have a good gender perspective. This is because many people have worked to socialize violence issues such as Komnas Perempuan and related institutions. Komnas Perempuan socialization does not only target highly educated people, instead, but also provide advocacy to the wider community in general, thus making Muslim women more enlightened about their rights and obligations as a wife. As stated by Qibtyah, as the Commissioner of Komnas Perempuan:

In my research, “*Muslim feminists*”, said that gender awareness has nothing to do with being highly educated or not. Even if the Professor has never discussed the issue of gender equality, is still biased. Even though she is only a high school graduate, she was raised in a family full of respect for human dignity, so she has a good gender perspective.<sup>36</sup>

Divorce is not easy to do and has legal or social consequences as well. However, in Riyani's research, there were several women whose lives were better when they were divorced. He revealed that his life became more relaxed and felt no more fear after the divorce. Although occasionally she wonders, how could her husband easily divorce her, even though she had been with him for 30 years and could easily turn to another woman he had just met.<sup>37</sup>As Murwanti, secretary of Rekso Diah Utami Women's Empowerment and Child Protection Office Yogyakarta said:

<sup>36</sup> Interview with Alimatul Qibtyah, Commissioner of the National Commission on Violence Against Women, Banguntapan, Yogyakarta, 30 January 2022.

<sup>37</sup> In 2009, her husband finally lodged the application for divorce to the Court. In the end, although divorce was not her choice, and she felt betrayed by her husband, she felt better: “since my divorce, I feel more relaxed and no longer afraid”. However, Ita often wonders how her husband could divorce her after 30 years together and turn to another woman he had just met. After the divorce, Ita was entitled to the house and several properties they had acquired during the marriage, as compensation because her husband refused to give her alimony and child support”.Riyani, “The Silent Desire: Islam, Women’s Sexuality and the Politics of Patriarchy in Indonesia.”

There are also clients, women who are victims of violence who sue for divorce from their husbands, who feel that their life is better after she is divorced. This is because the woman is financially capable, so when separated she is still alive. But when women are economically dependent on their husbands, they rarely feel that way.<sup>38</sup>

## 2. Criminal Lawsuits as a Measure of Resistance to Violence

Not only divorce, but criminal lawsuits are also a response by Muslim women's victims of marital rape. Choosing a criminal lawsuit shows that Muslim women who were being victims of marital rape have the courage to fight violence including sexual violence in marriage. They understand that when an act contains an element of a crime, it must be reported even if the act was committed by the husband himself. This is intended to provide deterrence and lessons for criminals. Of the 6 decisions of criminal lawsuits cases of marital rape, visibly Muslim women victims of marital rape understand that they have equal rights before the law. They have the right to obtain justice without any obstacles stemming from gender discrimination.<sup>39</sup> This is what makes Muslim women victims of marital rape normatively allowed to sue for divorce or sue their husbands criminally. When viewed from the perspective of gender understanding, this criminal lawsuit is a response from Muslim women who have been empowered. This empowerment comes from advocacy from various parties before taking a criminal law stand. Legal advocacy is what makes them braver and feel safe in reporting perpetrators of marital rape, which is her own husband.

The advocacy carried out by Komna Perempuan, the Office of Women's Empowerment and Child Protection (DP3A) for the Special Region of Yogyakarta, and the Integrated Service Center for Women and Children (P2TPA) Reksa Dyah Utami shows the rise of women agency, namely a form of empowerment efforts made by women to other women to reject the patriarchal culture that oppresses women and makes women powerless. Women's agency is to encapsulate the interpretation of women in their decision-making, freedom of movement, and gender attitudes.

The legal attitude towards suing the husband's crime is motivated by a sense of courage to fight violence. It considers the problem of marital rape as more than just a

<sup>38</sup> Riyani.

<sup>39</sup> Budi Hermawan Bangun, "Hak Perempuan Dan Kesetaraan Gender Dalam Perspektif Filsafat Hukum," *Pandecta Research Law Journal* 15, no. 1 (2020): 74–82.

private law problem but also a matter of public law, with the hope that the criminal act of marital rape does not occur in the next marriage of the perpetrator. This is what is meant by the long-term benefit of a criminal lawsuit against marital rape. The choice of law to sue a criminal after experiencing marital rape is also carried out in the public interest because it involves the interests of other people, namely the future wife and those around the perpetrator. Murwanti, as Secretary of the Integrated Service Center for Women and Children (P2TPA) Rekso Dyah Utami, said:

Many victims of violence report their husbands criminally. This is because many women understand their rights and obligations as a wife, and because we are part of the Women's Empowerment and Child Protection Service (DP3A), we often conduct outreach and advocacy regarding Law Number 23 of 2004 concerning the Elimination of Violence within Family (UU PKDRT) which in the end many women understand about their limitations as a wife.<sup>40</sup>

According to Komnas Perempuan, the reason is that women who are victims of marital rape dared to report and sue their husbands for criminal acts because they could no longer stand the conditions of extreme beatings. In the end, they chose to fight against the violence. As stated by Qibtiyah, as the Commissioner of Komnas Perempuan:

when a woman has the courage to report her husband criminally, it is certain that this is not the first time this has been done. Usually, women dare to report because they feel they are no longer strong and have gone through the previous romanticizing phase of violence. Women who are “new” to getting abused for the first time then choose to immediately report it, which is very rare. But that doesn't mean it doesn't exist.<sup>41</sup>

**Table 2:** Muslim women victims of marital rape who sued their husband's crime (based on biodata in the District Court's decision)

No	Age	Work	Education	Child	Effort
1	-	-	-	1	Criminal
2	-	-	-	1	Criminal
3	57 years	-	-	1	Criminal
4	-	Honorary	-	1	Criminal and Divorce
5	-	-	-	3	Criminal
6	-	-	-	0	Criminal

<sup>40</sup> Interview with S. Murwanti, Secretary of P2TPA “Rekso Dyah Utami”, Balirejo, Yogyakarta, March 2, 2022.

<sup>41</sup> *Ibid.*

According to Anshor, a Komnas Perempuan Commissioner explains that women as shown in table 2 has the courage to criminally report their husband. It is not always highly educated women who have the courage to report criminally. There are also women with low education who become victims of marital rape but dared to report their husbands directly. It could be because those with higher education have many considerations, it could be because of embarrassment, cultural factors, or guarding the family image, especially if the husband is in an important position in the government or company. For example, the client handled by Anshor is the son-in-law of the former National Police Chief. The victim did not report her husband to the police and did not sue her husband for divorce in order to maintain the good name of her extended family. For some circles, in the case of marital rape like this, the dimensions are more complex. It is different from the vegetable seller earlier, she filed a criminal report, filed for divorce, recovered, finished”.<sup>42</sup>

What conveys by Anshor is reinforced by Qibtiyah that the significance of a woman's economic independence influences the choice of legal stance. It cannot be ascertained. However, the more empowered a woman is from an economic standpoint in the family, the more she will have an assertive attitude to convey her feelings to say "not first". Consequently, she does not experience multiple layers of violence. However, all of this cannot be generalized, depending on how she deals with her husband.<sup>43</sup>

From the opinion of the two Komnas Perempuan Commissioners above, what makes Muslim women victims of marital rape finally choose to sue for divorce or sue their husband for crime is that she has had enough and has given up on the conditions of beating that the victims can no longer bear, wants to avoid repeated/layered violence, wants to get out of a marriage that is no longer wanted, wants to show that they have courage and empowerment to fight violence, and want to provide a deterrent effect or lesson for the perpetrator's marital rape. From the choice of criminal lawsuits, it is known that Muslim women were victims of marital rape it is those who are empowered that are able to choose the option of criminal law to be of long-term benefit to them.<sup>44</sup>

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> Dina Afrianty, “Agents for Change: Local Women’s Organizations and Domestic Violence in Indonesia,” *Bijdragen Tot de Taal-, Land-En Volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia* 174, no. 1 (2018): 24–46, <https://doi.org/10.1163/22134379-17401024>.



## Conclusion

Marital rape is an act of sexual violence within a marriage bond which can be resolved with two legal options, namely the choice of civil lawsuit law (divorce) and the choice of criminal lawsuit law. Regarding divorce claims, the legal norms given are not as firm as criminal law norms, because in divorce cases marital rape is only interpreted from acts of persecution or continuous disputes, whereas in criminal law marital rape constitutes an act of domestic violence. Through research taken from twelve court decisions, Muslim women who are victims of marital rape can take two legal options that have been provided in Indonesia.

The judges completed the divorce suit by interpreting marital rape as a form of continuous persecution and disputes even though the divorce was sued against the background marital rape. Judges settle criminal lawsuits by understanding that marital rape is a crime and a crime. Of the 6 Muslim women who sued their husbands for crime, all of their lawsuits were accepted. The choice of civil law by suing their husbands for divorce is an attempt by Muslim women victims of marital rape to avoid themselves and get out of the cycle of repeated and layered violence it occurs in marital relations. This is because victims who experience violence have the opportunity to experience layered violence when the violence occurs in a bonded relationship such as marriage rather than violence committed outside of marriage. Therefore, divorce is in the victim's personal interest marital rape to break away and get out totally from a marriage that is no longer wanted.

In the case of divorce, the independence of the victim of marital rape will greatly affect the choice of law they take, because victims can weigh and think for themselves so there are not many who need advocacy from others because the impact of divorce only applies between victims and perpetrators marital rape only that their marriage broke up. Usually, this independence arises when a person consciously feels that his rights, values, or life principles have been taken away by others. Women who choose to divorce after marital rape are independent women, as evidenced by their willingness and readiness to become widows/single parents. Meanwhile, in criminal lawsuits, Muslim women are victims of marital rape more in need of advocacy from women's agencies to have the courage to legally stand against violence and report their husbands. The choice of attitude towards criminal law means considering the problem of marital rape more than just a matter of private law, but also a matter of public law. The hope is that criminals with marital rape do

not do the same thing again if they have to get married later on. This long-term benefit is carried out in the public interest because it involves the interests of other people, such as the perpetrator's future wife and those around the perpetrator's marital rape, as well as for wider future benefits.

## References

- Afrianty, Dina. "Agents for Change: Local Women's Organizations and Domestic Violence in Indonesia." *Bijdragen Tot de Taal-, Land-En Volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia* 174, no. 1 (2018): 24–46. <https://doi.org/10.1163/22134379-17401024>.
- Aisyah, Siti, and Lyn Parker. "Problematic Conjugations: Women's Agency, Marriage and Domestic Violence in Indonesia." In *Contestations Over Gender in Asia*, 42–60. Routledge, 2017. <https://doi.org/10.4324/9781315695334-4>.
- Band-Winterstein, Tova, and Hila Avieli. "The Lived Experience of Older Women Who Are Sexually Abused in the Context of Lifelong IPV." *Violence against Women* 28, no. 2 (2022): 443–64. <https://doi.org/10.1177/10778012211000132>.
- Bangun, Budi Hermawan. "Hak Perempuan Dan Kesetaraan Gender Dalam Perspektif Filsafat Hukum." *Pandecta Research Law Journal* 15, no. 1 (2020): 74–82.
- Bennett, Linda R, Sari Andajani-Sutjahjo, and Nurul I Idrus. "Domestic Violence in Nusa Tenggara Barat, Indonesia: Married Women's Definitions and Experiences of Violence in the Home." *The Asia Pacific Journal of Anthropology* 12, no. 2 (2011): 146–63.
- Bergen, Raquel Kennedy, and Elizabeth Barnhill. *Marital Rape: New Research and Directions*. CiteSeer, 2006.
- Darussamin, Zikri, and Armansyah Armansyah. "Marital Rape Sebagai Alasan Perceraian Dalam Kajian Maqâshid Syari'ah." *Al-Ahwal: Jurnal Hukum Keluarga Islam* 12, no. 1 (2019): 84–98. <https://doi.org/10.14421/ahwal.2019.12107>.
- Ghanim, Shaleh. *Jika Suami Istri Berselisib: Bagaimana Mengatasinya*. Gema Insani, Jakarta, 1998.
- Khasanah, Uswatun. "Marital Rape Sebagai Alasan Perceraian Dalam Kajian Mubadalah Faqihuddin Abdul Kodir." *Ary-Syari'ah: Jurnal Hukum Islam* 9, no. 1 (2023): 89–101. <https://doi.org/10.55210/assyariah.v9i1.884>.
- Mahoney, Patricia, and Linda Meyer Williams. *Sexual Assault in Marriage: Prevalence, Consequences, and Treatment of Wife Rape*. na, 1998.
- Muhammad, K.H. Husein. *Fiqh Perempuan*. Edited by Yudi dan Faqihuddin Abdul Kodir. Cet I. Yogyakarta: IRCiSoD, 2019.
- Mulia, Musdah. *Ensiklopedia Muslimah Reformis: Pokok-Pokok Pemikiran Untuk Reinterpretasi Dan Aksi*. Edited by Penerbit BACA. Tangerang Selatan, 2020.
- Nakyazze, Brendah, Karin Österman, and Kaj Björkqvist. "Sexual Abuse and Accepting Attitudes towards Intimate Partner Rape in Uganda." *Medical Science and Discovery* 5, no. 5 (2018): 211–19. <https://doi.org/10.17546/msd.422907>.

- Nur Hayati, Elli, Malin Eriksson, Mohammad Hakimi, Ulf Högberg, and Maria Emmelin. "Elastic Band Strategy': Women's Lived Experience of Coping with Domestic Violence in Rural Indonesia." *Global Health Action* 6, no. 1 (2013): 18894. <https://doi.org/10.3402/gha.v6i0.18894>.
- Nurlia, Aisyah. *Nusyuz Suami Terhadap Istri Dalam Perspektif Hukum Islam*. UNIVERSITAS LAMPUNG, 2018.
- Putra, Tri Sulatama. "Pemaksaan Hubungan Seksual Terhadap Istri Dalam UU No 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga (PKDRT)." *Legalite: Jurnal Perundang Undangan Dan Hukum Pidana Islam* 2, no. II (2017): 87–103. <https://doi.org/10.32505/legalite.v2iII.350>.
- Rennison, Callie Marie. *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000*. US Department of Justice, Office of Justice Programs Washington, DC, 2002.
- Riyani, Irma. "The Silent Desire: Islam, Women's Sexuality and the Politics of Patriarchy in Indonesia." *University of Western Australia*, 2016.
- Samsudin, Titin. "Marital Rape Sebagai Pelanggaran Hak Asasi Manusia." *Al-Ulum* 10, no. 2 (2010): 339–54.
- Sari, Aldila Arumita, and R B Sularto. "Kebijakan Formulasi Kekerasan Seksual Terhadap Istri (Marital Rape) Berbasis Keadilan Gender Di Indonesia." *Jurnal Pembangunan Hukum Indonesia* 1, no. 1 (2019): 117–27. <https://doi.org/10.14710/jphi.v1i1.117-127>.
- Shihab, M Quraish. *Tafsir Al-Misbah. Jakarta: Lentera Hati*. IV. Vol. IX. Jakarta: Lentera Hati, 2005.
- Siburian, Riskyanti Juniver. "Marital Rape Sebagai Tindak Pidana Dalam RUU-Penghapusan Kekerasan Seksual." *Jurnal Yuridis* 7, no. 1 (2020): 149–69. <https://doi.org/10.35586/jyur.v7i1.1107>.
- Syaifuddin, Muhammad Irfan. "Konsepsi Marital Rape Dalam Fikih Munakahat." *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 3, no. 2 (2018): 171–90. <https://doi.org/10.22515/alakhkam.v3i2.1399>.
- Yllö, Kersti Ed, and M Torres. *Marital Rape: Consent, Marriage, and Social Change in Global Context*. Oxford University Press, 2016. <https://doi.org/10.1093/acprof:oso/9780190238360.001.0001>.