

CRIMINAL LAW RECONSTRUCTION OF MARITAL RAPE IN INDONESIA: REGULATION, OBSTACLES, AND VICTIM PROTECTION

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Abstract. The phenomenon of marital rape remains a complex issue in the Indonesian criminal law system. This study analyzes the normative, structural, and cultural issues in law enforcement against marital rape in Indonesia and proposes a direction for the reconstruction of ideal criminal law. This study aims to analyze the regulatory disharmony between the 2023 National Criminal Code, the Law on the Elimination of Domestic Violence, and the Sexual Violence Crime Law, besides to identify obstacles to law enforcement that weaken victim protection. A normative juridical method with a statutory and conceptual approach is used to examine the legal definition, structure of the offense, and legal definition of marital sexual violence. Secondary data sources derived from primary, secondary, and tertiary legal materials are processed using qualitative descriptive analysis techniques. The results show that obstacles to law enforcement against marital rape stem from normative gaps in the formulation of the offense, the nature of the complaint offense, and the definition of rape. From a cultural perspective, through social and patriarchal stigma, and structural aspects, as evidenced by the capacity of law enforcement officers, limited evidence, and the lack of integrated service mechanisms, this study recommends the need for criminal law reconstruction based on the principle of lack of consent, the elimination of complaint-based offenses, improving the quality of law enforcement, and building public awareness about women and gender equality through legal education and social campaigns..

Keywords: rape, sexual violence, marital rape.

I. INTRODUCTION

Marital rape remains one of the most complex and underreported forms of sexual violence in Indonesia because it occurs within an intimate legal relationship that is often socially perceived as private, sacred, and resistant to criminal intervention. In patriarchal family structures, sexual relations within marriage are frequently constructed as a marital obligation rather than as an interaction that requires free, conscious, and voluntary consent. This perception creates a legal and cultural dilemma: although marriage establishes rights and obligations between spouses, it cannot eliminate the wife's constitutional right to bodily integrity, dignity, security, and freedom from coercion. Therefore, forced sexual intercourse within marriage must be understood not merely as a domestic dispute but as a violation of human rights and criminal law principles [1], [2].

In the Indonesian legal context, the recognition of marital rape has developed through several legal instruments, particularly Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Law Number 12 of 2022 concerning Sexual Violence Crimes, and Law Number 1 of 2023 concerning the National Criminal Code. Law Number 23 of 2004 recognizes sexual violence in the household by

defining it as forced sexual intercourse against a person living within the domestic sphere [3]. Meanwhile, Law Number 12 of 2022 introduces a broader victim-protection framework, including rights to handling, protection, recovery, restitution, and assistance for victims of sexual violence [4]. The 2023 National Criminal Code also expands the formulation of rape; however, its construction remains strongly linked to violence, threats, and coercive circumstances, creating debate over whether the absence of consent has been sufficiently positioned as the core element of rape [5].

Despite these regulatory developments, the criminal law framework on marital rape in Indonesia still faces serious normative disharmony. The Domestic Violence Law explicitly covers forced sexual intercourse in domestic relations but treats certain forms of sexual violence between spouses as complaint-based offenses. This requirement may weaken law enforcement because victims often experience economic dependence, psychological intimidation, family pressure, and fear of stigma. The Sexual Violence Crime Law provides a more progressive and victim-centered approach but does not explicitly formulate marital rape as a separate offense. At the same time, the National Criminal Code regulates rape within the general criminal law structure but has not fully resolved the conceptual tension between violence-based and consent-based rape

definitions [6], [7]. This fragmented legal architecture may lead to inconsistent interpretation among police, prosecutors, judges, and victim-service institutions.

The urgency of this issue is reinforced by the continuing prevalence of violence against women in personal and domestic spheres. Komnas Perempuan reported that violence against women remains a serious national problem, with many cases occurring in intimate and household relationships [8]. Marital rape is also commonly treated as a hidden form of violence because victims are often reluctant to report abuse committed by their husbands. Empirical and socio-legal studies show that social stigma, religious misinterpretation, patriarchal norms, and economic dependence are major factors that discourage victims from seeking justice [9], [10]. As a result, official data may not reflect the actual scale of marital rape, because many cases remain unreported, unresolved, or diverted into informal reconciliation mechanisms.

From a human rights perspective, Indonesia's obligation to strengthen protection against sexual violence is also connected to international standards, particularly the Convention on the Elimination of All Forms of Discrimination against Women. The CEDAW Committee has emphasized the importance of ensuring effective protection for women from gender-based violence, including through legal reform, gender-sensitive law enforcement, and access to justice [11]. In this regard, the criminalization and enforcement of marital rape should be aligned with the principle that consent is the central element of sexual autonomy. A legal system that relies primarily on visible physical violence may fail to capture the reality of coercion in marriage, where domination, dependency, emotional pressure, and unequal power relations may operate without leaving physical injuries [12].

The cultural dimension also plays a significant role in shaping the enforcement of marital rape law. Indonesian society still contains strong normative assumptions that wives must obey husbands in sexual matters. Such assumptions may normalize coercive sexual conduct and weaken the moral legitimacy of victims' complaints. Legal reform, therefore, cannot be limited to statutory amendment; it must be supported by legal education, public awareness, and character-oriented social transformation. Suchyadi and Karmila emphasize that the educational environment has a substantial role in shaping character and social values, which is relevant to strengthening public understanding of gender equality, dignity, and non-violence [13]. In addition, Suchyadi et al. argue that teacher and community capacity-building programs can improve professional competence and social awareness through structured training and guidance [14]. These educational perspectives are important because the prevention of marital rape requires not only criminal sanctions but also long-term transformation of social consciousness.

Structurally, the enforcement of marital rape cases is also hindered by limited gender sensitivity among law enforcement officials, evidentiary difficulties, and insufficient integrated services for victims. Many victims encounter procedural barriers when reporting sexual violence, especially when officers continue to view marital rape as a private family matter rather than a criminal offense. The lack of trauma-informed investigation procedures may intensify victims' suffering and

discourage them from continuing the legal process. Furthermore, limited access to shelters, psychological support, legal aid, medical examination, and witness protection reduces the effectiveness of victim recovery. These structural weaknesses indicate that criminal law reconstruction must be accompanied by institutional reform and integrated service mechanisms [15].

Previous studies have discussed marital rape from various perspectives, including domestic violence law, feminist legal theory, Islamic legal interpretation, and sexual violence policy. However, many of these studies tend to examine one legal instrument separately, without fully mapping the relationship among the National Criminal Code, the Domestic Violence Law, and the Sexual Violence Crime Law. This study fills that gap by analyzing the normative, cultural, and structural obstacles that affect the enforcement of marital rape law in Indonesia and by proposing a reconstruction model based on the principle of lack of consent, victim-centered protection, and harmonization of criminal law instruments.

The novelty of this study lies in its integrated reconstruction framework. Rather than viewing marital rape only as a domestic violence issue, this study positions it as a criminal law, human rights, and gender justice problem that requires synchronization among substantive criminal law, procedural enforcement, and victim recovery mechanisms. Accordingly, the objective of this study is to analyze the regulation of marital rape under Indonesian positive criminal law, identify the normative, cultural, and structural barriers to law enforcement, and formulate an ideal direction for criminal law reconstruction to provide more effective protection for victims of marital rape in Indonesia.

II. RESEARCH METHODS

This study employs a normative juridical research method because the main object of analysis is the legal norm governing marital rape in Indonesia, particularly its formulation, interpretation, disharmony, and reconstruction within the criminal law system. Normative legal research is appropriate for examining legal principles, statutory provisions, doctrinal concepts, and the consistency of legal norms in relation to victim protection and criminal liability [16], [17]. The study focuses on the regulation of marital rape under three principal legal instruments, namely Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Law Number 12 of 2022 concerning Sexual Violence Crimes, and Law Number 1 of 2023 concerning the National Criminal Code [3]–[5]. Through this method, the research evaluates whether the existing criminal law framework has provided adequate protection for victims of marital rape and whether its provisions are consistent with the principle of bodily autonomy, gender justice, and victim-centered criminal law.

The research applies two main approaches: the statutory approach and the conceptual approach. The statutory approach is used to examine the structure, scope, and legal consequences of the relevant provisions in the Domestic Violence Law, the Sexual Violence Crime Law, and the National Criminal Code. This approach enables the study to identify normative inconsistencies, particularly regarding the definition of rape,

the complaint-based nature of domestic sexual violence offenses, and the absence of explicit recognition of marital rape as an independent criminal offense [18]. Meanwhile, the conceptual approach is used to analyze key legal concepts such as consent, coercion, domestic sexual violence, victim protection, and criminal law reconstruction. This approach is important because the legal problem of marital rape cannot be understood solely through textual interpretation of statutes, but must also be assessed through broader concepts of justice, human dignity, gender equality, and the protection of vulnerable victims [19].

The data used in this study are secondary legal materials consisting of primary, secondary, and tertiary legal sources. Primary legal materials include national legislation related to criminal law, domestic violence, sexual violence, constitutional rights, and victim protection. Secondary legal materials include books, journal articles, theses, legal commentaries, institutional reports, and scholarly opinions relevant to marital rape, criminal law reform, and gender-based violence. Tertiary legal materials include legal dictionaries, encyclopedias, and legal indexes that support the clarification of legal terminology. The collected materials are analyzed using qualitative descriptive analysis through systematic and teleological interpretation. Systematic interpretation is used to examine the relationship among different legal instruments, while teleological interpretation is used to assess whether the purpose of law enforcement is aligned with effective victim protection and substantive justice [20]. This analytical framework allows the study to formulate an ideal direction for criminal law reconstruction based on the principle of lack of consent, harmonization of legal norms, elimination of complaint-based barriers, and strengthening of victim-centered protection mechanisms.

III. RESULT AND DISCUSSION

Regulation of Marital Rape under Indonesian Positive Criminal Law

The findings show that the regulation of marital rape in Indonesia has developed through several legal instruments, yet it still faces conceptual and normative disharmony. The constitutional basis for the protection of victims can be traced to the guarantee of personal security, dignity, freedom from torture, and protection from discriminatory treatment. Within the criminal law framework, the main regulations relevant to marital rape are Law Number 1 of 2023 concerning the National Criminal Code, Law Number 23 of 2004 concerning the Elimination of Domestic Violence, and Law Number 12 of 2022 concerning Sexual Violence Crimes [3]–[5]. These three instruments indicate that Indonesian law has begun to recognize sexual violence in domestic relations, but their different formulations create uncertainty in determining the most appropriate legal basis for prosecuting marital rape.

The National Criminal Code regulates rape as a general criminal offense. However, the formulation of rape remains largely connected to violence, threats of violence, and coercive circumstances. This formulation is problematic because marital rape often occurs through psychological pressure, dependency, domination, and unequal power relations rather than visible

physical violence. Consequently, the violence-based formulation may not fully capture the reality of sexual coercion within marriage. In contrast, the Domestic Violence Law explicitly recognizes forced sexual intercourse within the household as sexual violence [3]. Nevertheless, its classification as a complaint-based offense in certain marital contexts creates procedural barriers because prosecution depends heavily on the victim's willingness and ability to file a formal complaint. This is problematic because many victims are economically, socially, and psychologically dependent on the perpetrator.

The Sexual Violence Crime Law provides a more progressive framework because it emphasizes victim protection, recovery, assistance, restitution, and integrated handling of sexual violence cases [4]. However, the law does not explicitly formulate marital rape as a distinct criminal offense. This creates interpretive uncertainty in practice, particularly when law enforcement officers must decide whether to use the Domestic Violence Law, the Sexual Violence Crime Law, or the National Criminal Code. The disharmony is therefore not merely technical but also conceptual, because each statute applies a different logic: the National Criminal Code is offense-oriented, the Domestic Violence Law is domestic-relation-oriented, and the Sexual Violence Crime Law is victim-protection-oriented.

The disharmony among these three laws can be summarized as follows:

Aspect	National Criminal Code 2023	Domestic Violence Law 2004	Sexual Violence Crime Law 2022	Legal Consequence
Definition of rape/sexual violence	Primarily violence-based	Forced-sexual-intercourse-based in domestic relations	Broader sexual violence framework	Inconsistent conceptual basis
Explicit recognition of marital rape	Not explicit	Recognized through domestic sexual violence	Not formulated as a separate offense	Interpretive uncertainty
Nature of offense	General criminal offense	Complaint-based in certain marital contexts	Victim-centered criminal justice framework	Different procedural consequences
Victim protection	Limited in criminal formulation	Available but sectoral	More comprehensive	Unequal access to protection
Evidentiary orientation	Physical violence and coercion	Domestic relationship and coercion	Victim statement, recovery, and assistance	Uneven evidentiary standards

This table indicates that the legal protection of marital rape victims is weakened by regulatory fragmentation. The existence of multiple statutes does not automatically guarantee effective protection when the statutes are not harmonized. Instead, overlapping provisions may create hesitation among police, prosecutors, and judges. As a result, victims may experience secondary victimization, delayed legal handling, or pressure to resolve the case informally.

Normative Obstacles in Law Enforcement

The first major obstacle is normative. The Indonesian criminal law system has not fully adopted the principle of lack of consent as the central element of rape. International human rights standards increasingly emphasize that sexual offenses should be defined based on the absence of free and voluntary consent rather than merely on proof of physical force [11]. In the context of marital rape, this distinction is crucial because coercion may occur through intimidation, manipulation, economic dependence, religious pressure, or emotional domination. A narrow violence-based definition risks excluding many victims whose experiences do not involve visible injuries.

The second normative obstacle lies in the complaint-based nature of domestic sexual violence under the Domestic Violence Law. While complaint-based offenses may be intended to respect privacy and family autonomy, this approach is inadequate in cases involving unequal power relations. Victims of marital rape may be unable to file complaints because they fear divorce, economic abandonment, retaliation, family stigma, or social exclusion. Thus, the complaint-based model places an excessive procedural burden on victims and may indirectly protect perpetrators.

The third obstacle is the absence of explicit harmonization among the National Criminal Code, the Domestic Violence Law, and the Sexual Violence Crime Law. Previous studies have shown that disharmony between the Domestic Violence Law and the Sexual Violence Crime Law may create confusion in the selection of legal instruments [6], [7]. This finding is also consistent with legal protection theory, which emphasizes that effective protection requires clear norms, accessible procedures, and enforceable remedies [21]. Therefore, criminal law reconstruction should not only amend one statute but should synchronize definitions, procedural rules, evidentiary standards, and victim recovery mechanisms.

Cultural Obstacles: Patriarchy, Stigma, and Misinterpretation of Marriage

The second major obstacle is cultural. Marital rape is difficult to prosecute not only because of legal ambiguity but also because of social norms that normalize male sexual authority in marriage. In many patriarchal settings, sexual relations are perceived as the husband's right and the wife's obligation. This perception reduces the wife's autonomy over her body and weakens public recognition of marital rape as a crime. Studies on public perceptions of marital rape in Indonesia show that many people still associate marital obedience with sexual submission, thereby obscuring the concept of consent [2], [9].

Stigma is another important barrier. Victims may be labeled as disobedient wives, blamed for family conflict, or pressured to preserve household harmony. Such stigma discourages reporting and reinforces silence. Komnas Perempuan's annual reports show that many cases of violence against women occur in the personal and domestic sphere, but reporting remains constrained by shame, family pressure, and social dependency [8]. This finding indicates that criminal law reform must be accompanied by public education and community-based awareness programs.

The cultural barrier is also connected to discriminatory social institutions. The OECD explains that discriminatory social norms, informal practices, and unequal gender expectations continue to limit women's rights and opportunities in various societies [24]. In marital rape cases, such norms affect not only victims but also families, community leaders, religious figures, and law enforcement officers. Therefore, changing legal norms without transforming social perception may result in weak implementation.

Structural Obstacles: Law Enforcement Capacity and Victim Services

The third major obstacle is structural. Law enforcement officers often lack adequate training in gender-sensitive and trauma-informed investigation. This limitation affects how police, prosecutors, and judges interpret victim testimony, psychological pressure, delayed reporting, and the absence of physical injury. UN Women and UNODC emphasize that gender-responsive policing requires survivor-centered investigation, risk assessment, protection planning, and coordination with support services [25]. Without these mechanisms, victims of marital rape may experience repeated questioning, disbelief, moral judgment, or pressure to reconcile with the perpetrator.

Evidentiary difficulties also remain a serious challenge. Marital rape often occurs in private spaces without witnesses. Physical evidence may be unavailable, especially when the coercion is psychological or when the victim delays reporting due to fear or trauma. Therefore, the evidentiary system must be adapted to recognize medical records, psychological assessments, victim statements, digital communication, counseling records, and expert testimony as relevant supporting evidence. A rigid evidentiary model that prioritizes visible injuries will fail to provide justice in many marital rape cases.

The lack of integrated victim services further weakens legal protection. Victims require legal aid, emergency protection, psychological recovery, medical examination, safe shelter, and economic support. However, these services are often fragmented and unevenly available across regions. LPSK data indicate that requests for witness and victim protection continue to increase, showing the growing need for institutional capacity in victim assistance and recovery [29]. Therefore, one-stop integrated services should be strengthened to ensure that victims can access protection, legal support, medical services, and psychosocial rehabilitation without navigating multiple disconnected institutions.

Direction of Criminal Law Reconstruction

Based on the findings above, the reconstruction of Indonesian criminal law on marital rape should be directed toward four main reforms. First, the definition of rape should be reconstructed by placing lack of consent as the central element. This reform is necessary to ensure that sexual coercion within marriage is recognized even when there is no visible physical violence. The law should clearly state that marriage does not constitute permanent sexual consent and that every sexual act must be based on free, voluntary, and conscious agreement.

Second, complaint-based barriers in marital sexual violence cases should be reconsidered. Marital rape should be treated as a serious crime against bodily integrity and human dignity, not

merely as a private domestic matter. Eliminating or limiting the complaint-based requirement would allow the state to act more actively in protecting victims, especially when victims are unable to report due to fear, dependency, or coercion. This direction is consistent with the principle that criminal law must protect vulnerable individuals from serious rights violations.

Third, the National Criminal Code, the Domestic Violence Law, and the Sexual Violence Crime Law should be harmonized. Harmonization should include the definition of rape, recognition of marital rape, procedural rules, evidentiary standards, victim protection mechanisms, and institutional coordination. Without harmonization, law enforcement officers may continue to apply different legal bases inconsistently, resulting in unequal protection for victims. Harmonization would also reduce legal uncertainty and strengthen prosecutorial effectiveness.

Fourth, criminal law reconstruction must be supported by structural and cultural reform. Law enforcement officers should receive regular training on gender sensitivity, trauma-informed investigation, and victim-centered justice. Public education should also be expanded to challenge patriarchal myths that position wives as objects of sexual entitlement. In addition, integrated victim services should be strengthened through cooperation among police, prosecutors, courts, hospitals, psychologists, social workers, legal aid institutions, and witness-protection agencies. Restorative justice may be considered only when it does not eliminate criminal accountability, does not pressure victims into reconciliation, and does not reduce victims' rights to justice and recovery [22], [23].

Novelty, Contribution, and Implications

The novelty of this study lies in its integrated reconstruction model. Unlike studies that examine marital rape only from the perspective of domestic violence law, this study connects normative disharmony, cultural stigma, structural weaknesses, and victim-centered criminal law reform. The study argues that marital rape should be reconstructed as a criminal offense based on lack of consent, supported by harmonized statutes and integrated victim services.

The theoretical contribution of this study is the development of a normative framework for analyzing marital rape as a criminal law, human rights, and gender justice issue. The practical contribution is the formulation of policy recommendations for lawmakers, law enforcement institutions, victim-service providers, and legal educators. These recommendations include revising the definition of rape, removing complaint-based barriers, improving evidentiary standards, expanding trauma-informed law enforcement training, and developing one-stop integrated victim services.

The implications of this study are significant for Indonesian criminal law reform. A victim-centered and consent-based approach would strengthen the protection of women within marriage and affirm that marriage does not remove individual autonomy over the body. Therefore, the reconstruction of criminal law on marital rape is not only a legislative necessity but also a constitutional and human rights obligation.

IV. CONCLUSIONS

This study shows that the regulation of *marital rape* in Indonesia still faces intertwined normative, cultural, and structural problems. The disharmony between the 2023 Criminal Code, the PKDRT Law, and the TPKS Law causes uncertainty in law enforcement due to differences in definitions, jurisdictional scopes, and the nature of delicacies, making it difficult for the authorities to determine the right legal basis. Culturally, strong patriarchal norms and social stigma pressure victims not to report, while structurally, limited capacity of the apparatus and integrated service mechanisms hinder the investigation and victim protection process. These findings show that these barriers do not arise only from a single aspect, but from the interaction between inadequate positive legal factors, social constructs that normalize the sexual power of husbands, and institutional weaknesses that have an impact on low access to justice for victims of marital rape. This research recommendation emphasizes the need for criminal law reconstruction based on the *lack of consent paradigm*, harmonization of norms between the Criminal Code, the Domestic Violence Law, and the TPKS Law, the elimination of complaint offenses, and increasing the capacity of law enforcement officials to adopt the victim's perspective. In addition, it is important to expand legal education and public campaigns to reduce stigma and change public perceptions of sexual relationships in marriage. However, this study has limitations because it relies on secondary data and normative analysis without direct empirical studies of the officers and victims, so it cannot describe the dynamics of law enforcement practices as a whole. Therefore, further research is recommended to use empirical approaches, including interviews and case studies, in order to provide a more comprehensive understanding of the factual barriers and effectiveness of policies in addressing marital rape in Indonesia.

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