

The Application of Legal Protection for Victims of Rape in Marriage in Unregistered Marriages: Between Legal Certainty and Human Rights in Indonesia

*Nurfadhilah Nahe^a, Yerik Tungatarov^b, Naimah Mohamad Nasir^c, Diana Farid^d,
Muhammad Husni Abdullah Pakarti^e

^a Universitas Negeri Gorontalo, Indonesia

^b International Islamic University Malaysia, Malaysia

^c Research Institute for Jochi Ulus Studies, Astana, Kazakhstan

^d Universitas Muhammadiyah Bandung, Indonesia

^e Sekolah Tinggi Ilmu Syariah Wal Aqidah Ash-Shofa Manonjaya, Indonesia

*Correspondence authors: naheenurr@gmail.com

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Abstract

Unregistered marriages remain a legal issue in Indonesia, as they place women in a more vulnerable position when they become victims of marital rape. Although Law No. 23 of 2004 on the Elimination of Domestic Violence (PKDRT), Law No. 12 of 2022 on Sexual Violence Crimes (TPKS), and the National Criminal Code provide a legal basis for protection against domestic sexual violence, prior research has largely focused on normative aspects and has not yet examined the implementation of legal protections for victims in unregistered marriages from a human rights perspective. This study aims to analyze the implementation of legal protections for female victims of marital rape in unregistered marriages and to identify obstacles affecting the effective fulfillment of victims' rights. A normative legal research method was employed, utilizing statutory, conceptual, case-based, and human rights approaches. The findings indicate that, normatively, victims are entitled to protection under the PKDRT Law, the TPKS Law, and the National Criminal Code, regardless of their marriage registration status. However, implementation remains suboptimal due to administrative hurdles in proving the marital relationship, victims' low legal awareness, patriarchal culture, limited access to protection services, and the inconsistent application of a gender perspective by law enforcement officials. This study contributes by highlighting the gap between normative guarantees and law enforcement practices, while emphasizing the importance of policy reform aimed at effectively and equitably protecting victims' rights.

Keywords: Marital Rape; Unregistered Marriage; Legal Protection; Human Rights; Gender Justice.

Abstrak

Perkawinan yang tidak tercatat masih menjadi persoalan hukum di Indonesia karena menempatkan perempuan pada posisi yang lebih rentan ketika menjadi korban marital rape. Meskipun Undang-Undang Nomor 23 Tahun 2004 tentang PKDRT, Undang-Undang Nomor 12 Tahun 2022 tentang TPKS, dan KUHP Nasional telah memberikan dasar perlindungan hukum terhadap kekerasan seksual dalam rumah tangga, penelitian terdahulu lebih banyak berfokus pada aspek normatif dan belum mengkaji implementasi perlindungan hukum bagi korban dalam perkawinan tidak tercatat dari perspektif hak asasi manusia. Penelitian ini bertujuan menganalisis implementasi perlindungan hukum terhadap perempuan korban marital rape dalam



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perkawinan tidak tercatat serta mengidentifikasi hambatan yang memengaruhi efektivitas pemenuhan hak korban. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, kasus, dan hak asasi manusia. Hasil penelitian menunjukkan bahwa secara normatif korban tetap memperoleh perlindungan melalui UU PKDRT, UU TPKS, dan KUHP Nasional tanpa membedakan status pencatatan perkawinan. Namun, implementasinya belum optimal akibat kendala administratif dalam pembuktian hubungan perkawinan, rendahnya kesadaran hukum korban, budaya patriarki, keterbatasan akses layanan perlindungan, serta belum optimalnya penerapan perspektif gender oleh aparat penegak hukum. Penelitian ini berkontribusi dengan menunjukkan kesenjangan antara jaminan normatif dan praktik penegakan hukum serta menegaskan pentingnya reformasi kebijakan yang berorientasi pada perlindungan hak korban secara efektif dan berkeadilan.

Kata Kunci: Marital Rape; Perkawinan Tidak Tercatat; Perlindungan Hukum; Hak Asasi Manusia; Keadilan Gender.

INTRODUCTION

Marriage is a formal union between a man and a woman recognized by law, both in a legal context and in a religious context. It aims to create a husband-wife relationship that conforms to legal norms and must last a lifetime in accordance with the institution of marriage. In the Criminal Code, the concept of marriage is not directly defined. Article 26 only discusses marriage in the context of civil relations and Article 27 affirms that marriage must be monogamous. Meanwhile, Article 103 stipulates that husband and wife have an obligation to be loyal to each other, help and support each other.¹

In accordance with the Marriage Law Number 1 of 1974, Article 1 paragraph (1), marriage is defined as: "a spiritual and physical bond between a man and a woman as husband and wife, which aims to build a happy and eternal family and household, based on belief in God Almighty." The emphasis on belief in God Almighty is crucial because Indonesia was founded on the first precept of Pancasila, which emphasizes belief in God. This shows that marriage is closely related to religious and spiritual aspects, where marriage involves not only physical aspects but also mental and spiritual aspects.²

The legal basis of marriage in Indonesia is based on Law Number 1 of 1974 jo. Law Number 16 of 2019, which requires official registration of every marriage in order to ensure legality and legal certainty. Nevertheless, the phenomenon of *nikah siri* or marriages that are not registered in the authorized agencies is still widespread. This reality triggers various juridical problems, especially the weakening of the protection of wife's rights in the domestic realm. As a result, women's legal position becomes vulnerable, especially when facing acts of domestic violence or neglect of rights born as a result of the marital bond.

Women are often the most vulnerable parties in unregistered marriages. In situations such as conflict, neglect, domestic violence, and divorce, wives have

¹ Tulus Prijanto, "Tinjauan Dan Pandangan Hukum Terhadap Perkawinan Yang Tidak Tercatat Pemerintah Serta Dampaknya Secara Ekonomi," *JURNAL ILMIAH EDUNOMIKA* 5, no. 2 (2021): 702, <https://doi.org/10.29040/jie.v5i2.2376>.

² Mohammad Nurul Huda and Abdul Munib, "Compilation of the Purpose of Marriage in Positive Law, Customary Law, and Islamic Law," *Voice Justisia Jurnal Hukum Dan Keadilan* 6, no. 2 (2022), <https://journal.uim.ac.id/index.php/justisia/article/view/1970/1056>.

difficulty defending their rights due to a lack of evidence.³ This situation adds to the barriers to obtaining legal protection, assistance services, or recognition of their rights.

Data on marriage registration shows that there is a gap between administratively registered marriages and marriage practices in society. Data from the Ministry of Religious Affairs shows that the number of officially registered marriages has decreased from 2,033,585 marriages in 2019 to 1,478,424 in 2024. On the other hand, Komnas Perempuan in 2026 cites data on around 34.6 million couples with unregistered marital status in Indonesia. The large number of unregistered marriages shows that the problem of marriage registration is not solely related to state administration, but also has consequences for the certainty of legal status and women's ability to obtain protection when violence occurs in marital relationships.⁴

This problem becomes even more significant when associated with the high level of violence against women in the personal sphere. The National Commission on Anti-Violence against Women (Komnas Perempuan) through its 2025 Annual Report (CATAHU) which will be launched in 2026 recorded 376,529 cases of Gender-Based Violence against Women (KBGtP), an increase of 14.07% compared to the previous year. Of these, 337,961 cases or 89.76% occurred in the personal realm, while 17,252 cases occurred in the public sphere and 2,707 cases in the state realm. The data shows that personal relationships, including marital and domestic relationships, remain a very vulnerable space to violence against women.⁵

In practice, law enforcement officials often face various obstacles in handling reports of sexual violence that occur in the domestic environment. One of the causes is the assumption that marital relationships are a private realm that should not receive state interference. In fact, the state still has a constitutional obligation to provide guarantees of protection for all citizens from various forms of violence, including those that take place in the domestic realm.

The dynamics of criminal law reform in Indonesia also affect the regulation of sexual violence in marriage. Initially, criminal law regulations tended to focus on the protection of women outside of marital status, so that acts of sexual coercion by husbands against their wives have not been explicitly categorized as crimes. This is evident in the text of Article 285 of the conventional Criminal Code, which narrowly limits rape offenses only to women who are not tied by the status of their wives to the perpetrators. As a result, these provisions fail to accommodate an adequate legal basis to take action against perpetrators of marital sexual violence and create a regulatory vacuum in the settlement of these cases.⁶

³ Irfanul Faruqi, "Legalitas Dan Perlindungan Hukum Dalam Perkawinan Tidak Tercatat Di Indonesia : Analisis Yuridis Normatif Dan Implikasi Sosiologis," *Jurnal Ilmiah Multidisiplin Ilmu* 3, No. 2 (2026): 170–76, <https://doi.org/10.69714/D4x16059>.

⁴ Nailur Rahmi et al., "Building Legal Compliance: A Study on the Practice of Unregistered Marriages in Tanjung Raya Subdistrict, Agam Regency, West Sumatra, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 1 (2025): 416–37, <https://doi.org/10.22373/sjhk.v9i1.28306>.

⁵ "Siaran Pers Komnas Perempuan Peluncuran Catatan Tahunan Kekerasan terhadap Perempuan 2025," accessed August 13, 2026, <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-peluncuran-catatan-tahunan-kekerasan-terhadap-perempuan-2025>.

⁶ Ardhina Shafa Sipayung and Mualimin Mochammad Sahid, "AWAKENING WOMEN'S AGENCY THROUGH ORGANIZATIONS: Legal Attitude of Muslim Women Victims of Marital Rape," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 15, no. 2 (2022): 257–74, <https://doi.org/10.14421/ahwal.2022.15206>.

The turning point of this regulation began since the enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law). The regulation records history as a pioneering rule that explicitly classifies domestic sexual violence as a criminal act. Through Article 8 letter a of the PKDRT Law, it is emphasized that any form of forced intimate relations against individuals living under one roof, including a wife, is a violation of the law. This provision finally paves the way for law enforcement to take action against perpetrators of marital sexual violence, even though the phrase "rape" is not explicitly mentioned in the text of the law. Therefore, the substance of this regulation focuses on not solely the sexual activity, but on whether or not there is an element of coercion, intimidation, or pressure that deprives the victim of the right to give consent.⁷

In addition, the ratification of Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law) has increasingly strengthened the legal umbrella for survivors of sexual violence, including those experienced in conjugal bonds. This regulation covers various forms of physical and psychological sexual harassment and violence, while at the same time setting the principle that consensus or absolute consent is a legal requirement in every intimate relationship. Through this regulation, sexual acts committed without the will or consent of the spouse in a marital bond can be qualified as a form of sexual violence that can be legally accounted for. The existence of the TPKS Law offers a much more comprehensive and progressive legal framework than previous rules, while emphasizing that the marriage bond should not be used as a shield or legitimacy to commit sexual violence against a spouse.⁸

Viewed from a human rights perspective, the provision of protection for wives who experience marital sexual violence is a form of the state's obligation to uphold gender justice and uphold human dignity. This mandate is in line with the provisions of Law No. 39 of 1999 concerning Human Rights, which guarantees the right of every individual to be free from all kinds of discrimination, torture, and degrading treatment. On the basis of this principle, unrecorded marital status should not be used as an excuse to limit or eliminate women's rights to obtain legal protection when they are victims of sexual violence that occurs in the household.

Referring to legal protection for women victims of sexual violence, the essence does not only depend on the existence or absence of legal products, but also concerns the real guarantee of the fulfillment of the victim's rights. In line with Harjono's view, legal protection is interpreted as an effort to secure an interest through legal instruments by transforming it into a legally valid right. Therefore, legal protection for victims of marital rape goes beyond the limits of the existence of criminal sanctions alone, but also includes certainty so that victims can obtain the right to security, justice, assistance, recovery, and protection from adverse actions. This understanding is important in seeing the extent to which the available legal provisions can provide real protection for women victims of marital rape in unregistered marriages.⁹

In addition to the legal protection approach, the issue of marital rape also needs to be analyzed through the perspective of feminist legal theory. Feminist legal theory was

⁷ Ogunwale, A. O., Dipeolu, I. O., & Olaitan, O. L., "Knowledge and Perceptions of Marital Rape among Women in Oyo State, Nigeria," *African Journal of Biomedical Research*, 2020.

⁸ *Ibid.*

⁹ Sinaga, Dahato Fontana Sinaga, and Maria Novita Apriyani. "Perlindungan Hukum Korban Tindak Pidana Marital Rape terhadap Perempuan dalam Perkawinan Dibawah Tangan." *UNES Law Review* 6.4 (2024): 10169-10180.

born as an effort to answer the problem of gender injustice in the legal field and criticize the legal system that develops in the construction of patriarchal society. In the context of marital rape, this theory is used to measure the extent of the effectiveness of the law in providing protective justice for women and identify the existence of gender bias that can affect the fulfillment of victims' rights. As an instrument of analysis, feminist legal theory serves to provide a perspective as well as a critique of the phenomenon of marital rape in Indonesia. This approach does not aim to redesign the legal system to discriminate against men in favor of women, but rather to cleanse legal institutions from the structural losses experienced by women and reconstruct them to be free from gender bias. Thus, the goal is to prioritize substantive justice values, rather than simply granting certain privileges.¹⁰

One of the real cases of rape in a serial marriage befell a woman in Denpasar, Bali, who lost her life after suffering broken ribs, bruises on the chest, and infection of intimate organs due to forced intercourse from her husband. The tragedy began even though the victim had firmly refused because her physical condition was weakening due to illness, shortness of breath, and a recurrence of her history of heart disease. However, the rejection was not heeded by her husband who continued to force the relationship.¹¹ This incident shows the importance of a more in-depth study of the effectiveness of legal protection for women who have experienced rape in serial marriages, in order to ensure that the rights of victims continue to receive legal guarantees and defense.

Studies related to legal protection for wives who have experienced rape in serial marriages have been explored through various perspectives. One of the studies by Dahato Fontana Sinaga and Maria Novita Apriyani examined aspects of legal protection for women who are victims of similar sexual violence in unregistered marriage bonds. The findings of the research indicate that the conventional Criminal Code does not contain explicit rules regarding marital rape offenses. On the other hand, the new Criminal Code in 2023, the PKDRT Law, and the TPKS Law have actually accommodated an adequate legal protection basis for victims. However, these regulations have not specifically accommodated protection for victims of rape in unregistered marriages, so there are still legal gaps or loopholes that have the potential to reduce the effectiveness of protection for victims' rights.¹²

In contrast to previous research which focused more on the analysis of legal protection for women victims of rape in marriages that are not registered based on the provisions of laws and regulations, this study focuses on the implementation of legal protection and the fulfillment of human rights for women who are victims of unregistered marriages in Indonesia. In addition to examining the various legal instruments that are the basis for protection, this study also describes how these provisions are applied in practice and identifies various obstacles that affect the effectiveness of fulfilling the rights of victims.

¹⁰ Yuwono, Nikmatul Keumala Nofa, and Anjani Dyah Triwulandari. "Kritik Teori Hukum Feminis Terhadap Kasus Marital Rape di Indonesia." *AMAR* 3.1 (2025): 47-57. <https://doi.org/10.62734/jurnalamar.v3i1.764>

¹¹ "Konsep Marital Rape, Masih Dianggap Antara Ada dan Tiada," nasional, accessed June 11, 2026, <https://www.cnnindonesia.com/nasional/20210617134110-12-655661/konsep-marital-rape-masih-dianggap-antara-ada-dan-tiada>.

¹² Dahato Fontana Sinaga Sinaga and Maria Novita Apriyani, "Perlindungan Hukum Korban Tindak Pidana Marital Rape terhadap Perempuan dalam Perkawinan Dibawah Tangan," *UNES Law Review* 6, no. 4 (2024): 10169–80, <https://doi.org/10.31933/unesrev.v6i4.1930>.

In addition, this study applies a human rights perspective to measure the effectiveness of legal protection guarantees received by women victims of rape in serial marriages. Through this method, this study is expected to be able to present a much more comprehensive case analysis related to the gap between positive regulatory norms and the reality of their application in the field. Furthermore, the findings of this study are expected to function as an evaluation instrument as well as strengthen legal protection measures and the fulfillment of human rights for women who experience domestic sexual violence.

From this explanation, it is clear that despite the various legal regulations to protect victims of sexual violence, Indonesia still faces many challenges in implementing legal and human rights protections for women who have experienced rape in unregistered marriages. The absence of administrative recognition of unregistered marriages often causes difficulties in proving marital status, obtaining protection services, and fighting for victims' rights in court.

Based on this presentation, this study is crucial to examine the implementation of legal protection and human rights for women survivors of rape in serial marriages in Indonesia, in addition to mapping various obstacles that reduce the effectiveness of its implementation. Through this study, it is hoped that constructive recommendations will be born that support policy formulation and legal reforms that are more in favor of the needs of victims, while strengthening the guarantee of the fulfillment of women's human rights in the domestic sphere.

RESEARCH METHODS

This study applies a qualitative method through a normative juridical approach, which focuses on the analysis of legal principles, legal principles, doctrinal views, and legislative products related to legal protection for women victims of *marital rape* in unregistered marriages. This approach was chosen because the problem of rape in marriage lies on a positive legal basis, which requires a thorough examination of the main legal sources. This juridical-normative method provides an opportunity for researchers to critically assess old regulations and analyze them with state regulations, especially the TPKS Law, which serves as the basis of modern law for sexual violence in Indonesia.¹³

This research applies several approaches, including the statute approach, the conceptual approach, and the case approach. The legislative approach is used to study and analyze various legal regulations that are related to the protection of victims of sexual violence. The legal provisions that are the focus of the study include Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Law Number 12 of 2022 concerning the Crime of Sexual Violence, and Law Number 1 of 2023 concerning the Criminal Code. The conceptual approach is used to examine the concepts of legal protection, human rights, feminist legal theory, and the concept of marital rape as the basis for analysis. The case approach is used to examine relevant court decisions to understand the application of legal norms in judicial practice.¹⁴

¹³ Ainul Mardhiah et al., "Sexual Violence In Marriage (Marital Rape): A Fiqh Perspective And The Sexual Violence Crimes Law (Uu Tpks)," *Journal Analytica Islamica* 15, no. 1 (2025): 13–23, <https://doi.org/10.30829/jai.v14i3.27279>.

¹⁴ Rufaidah Rufaidah et al., "Rekonstruksi Normatif Penegakan Hukum terhadap Kekerasan Seksual dalam Rumah Tangga Berdasarkan Undang-Undang Nomor 23 Tahun 2004," *Jurnal Hukum Lex Generalis* 7, no. 7 (2026), <https://doi.org/10.56370/jhlg.v7i7.3507>.

The classification of legal sources used in this scientific work is divided into two categories, namely main and supporting references. The first category includes the 1945 Constitution, Law Number 23 of 2004 concerning PKDRT, Law Number 12 of 2022 concerning TPKS, Law Number 1 of 2023 concerning the Criminal Code, as well as a number of jurisprudence or court decisions that are linear with the topic of discussion. On the other hand, supporting references are sourced from literature, academic journals, previous scientific works, the views of legal experts, and other relevant references that discuss aspects of legal defense for women survivors of sexual violence.¹⁵

The process of collecting literature data is carried out through literature search by collecting and grouping appropriate regulations. Furthermore, all juridical materials are evaluated using a qualitative method by harmonizing between written rules, conceptual frameworks, doctrinal views, and related jurisprudence. In order to unravel the meaning of legal norms regarding the defense of women's rights to rape in marital rape bonds, an in-depth analysis was applied through legal interpretation techniques, which include grammatical, systematic, and teleological interpretations. The results of the analysis were used to assess the implementation of legal protection and identify obstacles in the fulfillment of victims' rights, then presented in a descriptive-analytical manner.

RESULTS AND DISCUSSION

Implementation of Legal Protection for Women Victims of Marital Rape in Unregistered Marriages in Indonesia

The term *marital rape* is adopted from the English vocabulary, where the term marital refers to matters related to the marriage bond, while rape is interpreted as rape. Based on this definition, this term refers to the practice of coercing sexual activity experienced by a person from his legal partner in a marital bond either by the husband to his wife or vice versa.¹⁶ Legal protection for women victims of marital rape is one of the government's measures to ensure that every individual has the right to safety and freedom from various types of violence. The development of criminal law regulations in Indonesia regarding the crime of rape in marriage has made significant progress in recent years.

In the perspective of Islamic law, sexual relations in marriage are basically based on a valid marriage contract. Sexual relations become halal for men and women after the occurrence of a valid marriage contract. Thus, a marriage contract is seen as a contract that provides the halalness of sexual relations between husband and wife. This view is in line with the conception of the jurists who in defining the marriage contract emphasizes the aspect of the ability of the physical relationship between the parties who perform the contract.¹⁷ However, the halalness of sexual relations as a consequence of a marriage contract cannot necessarily be interpreted as a justification for the coercion of sexual relations. In the context of marital rape, sexual relations carried out by coercion need to be distinguished from sexual relations carried out on the basis of the willingness of both parties. Therefore, the marriage contract should not be understood as the elimination of a woman's right to determine her will over her body, but rather to be placed in the principle of good treatment and respect for her partner.

¹⁵ *Ibid.*

¹⁶ Debanjan Banerjee and T.S Sathyanarayana Rao, "*The Dark Shadow of Marital Rape: Need to Change the Narrative*," 4, no. 1 (2022).

¹⁷ Evy Septiana Rachman, "Marital Rape Dalam Perspektif Hukum Islam (Kajian Epistemologi)," *Justicia Sains: Jurnal Ilmu Hukum* Vol. 04 No. 01 Juni (2019), <http://dx.doi.org/10.24967/jcs.v4i1.424>

Consent in sexual relations is an important aspect of marital relations according to the perspective of Islamic law. Sexual relations in marriage are essentially a common right for married couples which should be built on the basis of willingness, love, and mutual respect for the rights and responsibilities of each party. Although there is a view in fiqh that places the wife in a position of obligation to meet the sexual needs of her husband and associates rejection with the concept of *nusyuz*, the development of contemporary Islamic thought shows that there is an emphasis on the principle of willingness and prevention of all forms of coercion that have the potential to degrade the dignity and dignity of the couple.¹⁸ In the context of *marital rape*, this principle shows that marriage cannot be interpreted as giving an absolute right to the husband to obtain sexual relations without considering the wife's will. Consent or *rida* is an important principle in building a husband and wife relationship based on respect and benefit, so that the coercion of sexual relations that ignores the will of the spouse is contrary to the principle of protection of women's dignity and integrity.

The issue of *marital rape* can be studied from the perspective of *maqasid al-shari'ah*, which is the orientation of Islamic law in bringing good and rejecting all forms of loss. Through this lens, the act of forcing intimate relations in the domestic realm is completely intolerable because it threatens the safety of the five basic pillars that must be protected, including the protection of religion, life, reason, descendants, and property ownership. Sexual coercion can cause suffering and physical and psychological impacts for the victim, so it is contrary to efforts to protect the soul and mind.¹⁹ In addition, these actions can also affect the life of the family and descendants and cause losses for the victim. Therefore, marital rape is basically contrary to the principle of benefit in *maqasid al-shari'ah*, because it causes mafsadah to various aspects of the victim's life. Mutasir and Wahyi Busyro emphasized that marital rape is prohibited because it can damage the five main principles in *maqāṣid al-syarī'ah*, as well as showing that the husband is still obliged to treat his wife ma'ruf and understand the wife's condition so that coercion does not occur that causes physical and psychological suffering.

Since the early days of its formation, Indonesia's criminal law system that inherited Dutch colonial regulations (*Wetboek van Strafrecht*) has not explicitly criminalized the crime of rape in the domestic sphere. This condition is evident in the redaction of Article 285 of the old Criminal Code, where the crime of rape is strictly required as the act of a man who forces a woman outside the legal marriage bond through threats or physical violence. The limitation of this norm indicates that the act of a husband who forces his wife to have sex has not been categorized as an unlawful act that can be imposed by criminal sanctions. Thus, the provision implicitly provides protection to the husband, since the marital relationship is considered the basis that legitimizes sexual relations without considering the consent of the wife.²⁰

The strengthening of the defense of women's rights and protection efforts for victims of domestic violence has triggered the passage of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. The presence of this law is an

¹⁸ Mintarsih, Mimin, et al. "Contestation of the Concept of Consent: A Comparative Reconstruction of Rape in Marriage Based on Indonesian Criminal Law and Islamic Law." *Journal of De Jure Legal Research* 25.3 (2025): 201-218.

¹⁹ Mutasir dan Wahyi Busyro, "Marital Rape in Indonesia in Maqashid Shari'ah Perspective," *El-Aqwal: Journal of Sharia and Comparative Law*, Vol. 2, No. 2 (2023), hlm. 95–110, <https://doi.org/10.24090/el-aqwal.v2i2.9340>.

²⁰ Nella Liandini, "Sanksi Pidana Terhadap Tindak Pidana Marital Rape Dalam Perspektif Hukum Pidana Indonesia," *MADANIA Jurnal Hukum Pidana Dan Ketatanegaraan Islam* 15, no. 2 (2025): 67–86.

important milestone in strengthening the guarantee of legal protection for wives from various forms of violence that occurs in the household, including violence with sexual content. This law emphasizes that sexual activity carried out forcibly in the home is a form of sexual violence and can be sanctioned according to applicable law. This provision establishes a legal framework to punish perpetrators of marital rape, although the word "rape" does not appear explicitly.²¹

The development of legal protection for victims of marital rape in marital relationships is increasingly seen with the enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Based on the mandate of Article 8, the regulation provides specific attention and regulation related to sexual crimes in the domestic realm. However, the definition of the element of "coercion" in sexual relations has not been comprehensively formulated, even though the act is categorized as a form of sexual violence.²²

The enactment of Law Number 12 of 2022 concerning the Crime of Sexual Violence marks a very crucial new chapter in the evolution of the criminal law system in Indonesia. The presence of this law not only serves as a refinement of the provisions in the Criminal Code that were previously considered inadequate, but also brings fundamental changes to the paradigm of juridical defense for victims of sexual crimes, especially women. The TPKS Regulation contains a much more comprehensive coverage of a variety of sexual crimes while occupying the element of consent as an absolute requirement in intimate interaction. In addition, the new Criminal Code contained in Law Number 1 of 2023 also provides legal certainty for domestic sexual crime cases by prohibiting acts of coercive intimate relations committed by husbands and wives against their partners.

The enforcement of punishment for perpetrators of sexual crimes is described in detail in Articles 46, 47, and 48 of the PKDRT Law. Article 46 stipulates the threat of punishment in the form of imprisonment for a maximum of twelve years or a fine of up to Rp36,000,000.00 for violators of the provisions of Article 8 letter a. Meanwhile, Article 47 contains punishment provisions for anyone who forces fellow family members to have intercourse as referred to in Article 8 letter b, with a minimum prison sentence of four years and a maximum of fifteen years, or fines ranging from Rp12,000,000.00 to Rp300,000,000.00.²³

As an application of *jus constituendum*, or the law sought, Criminal Code No. 1 of 2023 introduces meaningful changes to Indonesia's criminal law, including the handling of domestic violence cases. The new Criminal Code includes more detailed and clear provisions regarding domestic violence, both sexual and physical, ensuring that every act of violence is strictly prosecuted and maximum protection is provided to victims.²⁴

²¹ Adams-Clark, A. A., & Chrisler, J. C., *What Constitutes Rape? The Effect of Marital Status and Type of Sexual Act on Perceptions of Rape Scenarios.*, 24, no. 16 (2018), <https://doi.org/https://doi.org/10.1177/1077801218755975>.

²² Cucu Solihah et al., "Marital Rape (Kekerasan Seksual dalam Perkawinan) Perspektif Budaya Hukum dan Undang-Undang Nomor 23 Tahun 2004 Tentang PKDRT," *PALASTREN: Jurnal Studi Gender* 15, no. 1 (2022): 149–76, <https://doi.org/10.21043/palastren.v15i1.7167>.

²³ Litya Surisdani Anggraeniko et al., "Marital Rape Sebagai Suatu Kekerasan Dalam Rumah Tangga Dalam Perspektif Hukum Islam Dan Positif Indonesia," *Asy-Syari'ah* 24, no. 1 (2022): 161–78, <https://doi.org/10.15575/as.v24i1.18453>.

²⁴ Vernanda Ragil Saputra and Irfa Ronaboyd, "The Crime of Marital Rape Viewed from the Perspective of Criminal Law in Indonesia," *NOVUM: JURNAL HUKUM* 12, no. 02 (2025), <https://doi.org/10.2674/novum.v11i02.64159>.

In contrast to the old Criminal Code which limited the crime of rape to only women who are not the perpetrator's wife, the Criminal Code, through Article 473 of the Criminal Code No. 1 of 2023, has introduced a more progressive recognition of the existence of marital rape as a form of sexual violence in marriage. This provision reaffirms that marriage does not negate a person's right to approve or reject sexual relations. Therefore, sexual relations carried out by a husband or wife without the consent of their spouse can be classified as rape and can be punished by imprisonment for up to 12 years. This regulation reflects an evolution in Indonesia's criminal law, which increasingly upholds the protection of human rights, gender equality, and respect for the physical integrity of the victim as core principles in law enforcement.

In some cases, marriage involves a power imbalance between husband and wife, in this case *marital rape*, which is shaped by patriarchal values that are deeply rooted in Indonesian culture. Law enforcement in cases of marital rape faces significant obstacles stemming from a societal culture that continues to place women in subordinate or inferior status.²⁵

Victims of marital rape are still in a vulnerable position due to the strong influence of patriarchal culture that legitimizes sexual relations without consent as long as it occurs in a marriage bond that is considered legitimate. The strong patriarchal culture supported by certain interpretations of religious teachings has formed the view that men have a position as the most authoritative party in domestic life. This view then gives birth to the assumption that after the marriage takes place, the husband has full rights to his wife's body. As a result, the act of forcing intimate relations in the realm of marriage often escapes the view of the public and law enforcement officials as a form of sexual crime or violation of human rights.²⁶

Although Indonesia already has a set of legal rules that offer comprehensive protection guarantees for victims of sexual violence, implementation in the field still encounters various obstacles. One of the classic obstacles that often arise is the low level of sensitivity of law enforcement officials in looking at cases from the perspective of the victim when processing cases of sexual violence, the lack of optimal availability of facilities and assistance services, the still strong culture of blaming the victim, and the fear of victims to report the events they experienced. These factors cause many victims to choose not to take legal action because they are afraid that their testimony will not be believed, receive humiliating treatment, receive stigma from the social environment, or experience retaliation from the perpetrator.²⁷

Greater vulnerability is experienced by women who are victims of rape in marriages that are not officially recorded. The absence of a marriage certificate as administrative evidence often makes it difficult to prove the legal relationship between the victim and the perpetrator. This situation has an impact on the victim's access to obtain legal protection, assistance services, and the fulfillment of other rights related to marital status. Basically, the provisions in the Law on PKDRT and the TPKS Law provide certainty of legal protection for every survivor of sexual violence regardless of

²⁵ Cucu Solihah. Op.cit

²⁶ Azzhara Nikita Wahdah and Beniharmoni Harefa, "Enforcement Of Laws On Sexual Violence In Marriage (Marital Rape): A Comparative Study Of Criminal Laws In Indonesia And Singapore," *Awang Long Law Review* 8, no. 1 (2025): 8–22, <https://doi.org/10.56301/awl.v8i1.1810>.

²⁷ Raisya Muchlisa et al., "Efektivitas Implementasi UU Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual Dalam Perlindungan Korban," *Jurnal Hukum Al-Hikmah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat* 7, no. 1 (2026): 12–29, <https://doi.org/10.30743/jhah.v7i1.13603>.

whether or not there is a marriage registration or marital status. The PKDRT Law and the TPKS Law provide protection for all victims of sexual violence regardless of marital status. However, in law enforcement practice, unregistered marriages are still often an administrative obstacle, reducing the effectiveness of implementing legal protection for victims.

In addition to facing the physical and psychological impact of sexual violence, women who are victims of rape in unregistered marriages are also in a much more vulnerable position due to the lack of legal certainty about their status as wives. The absence of administrative recognition of marriage often makes it difficult for victims to prove a legal relationship with the perpetrator, making the process of obtaining legal protection more complex. This condition has an impact on the non-optimal fulfillment of the victim's rights to obtain justice, rehabilitation services, and legal protection that should be provided by the state. Therefore, the legal protection mechanism for rape victims against unregistered marriages needs to apply an approach oriented to the interests of the victim, so that the administrative status of the marriage is not used as an excuse to hinder the fulfillment of the victim's rights.

Based on this description, it can be understood that the legal system in Indonesia has provided various kinds of measures to provide protection to women victims of rape in marriage, including through the PKDRT Law, the TPKS Invitations, and the National Criminal Code. Nevertheless, the effectiveness of the implementation of this protection still continues to face many challenges, especially for women who are in unregistered marriages. The dominance of patriarchal culture, the strong social stigma against victims, the low level of public insight related to the legal rights inherent in the victims, along with various administrative obstacles in proving marital status, are factors that hinder the fulfillment of access to justice. Therefore, it is very necessary to strengthen cooperation between entities and improve the competence of law enforcement officials through the application of gender and human rights perspectives so that protection for victims can be carried out more effectively, as well as the preparation of more inclusive protection policies to ensure that the rights of victims can be fulfilled effectively and comprehensively.

Obstacles to the Implementation of Legal Protection for Women Victims of Marital Rape in Unrecorded Marriages in Indonesia

Indonesia has provided various juridical instruments to ensure the safety of victims of marital rape such as the PKDRT Law, the TPKS Law, and the National Criminal Code. The implementation of protection for women who experience these crimes in an unofficial marriage bond still hits many obstacles so that it has not run optimally. These various obstacles are not only rooted in the issue of juridical regulations, but are also shaped by social, cultural, institutional bureaucratic elements, as well as psychological and physical situations that abuse victims, where all of these factors cumulatively weaken the effectiveness of the implementation of legal protection in the field.

Domestic violence is a form of crime that arises due to an imbalance of power between the perpetrator and the victim within the scope of the family. In practice, domestic violence is still often perceived as a private problem that does not deserve intervention from parties outside the family. In fact, this act is an act that is contrary to the law and violates human rights. Because it takes place in the domestic realm, many cases of domestic violence have never been reported to law enforcement officials. This condition is further strengthened by a culture that upholds family honor and views

domestic issues as a personal matter, so that victims tend to choose to hide the violence they experience. In addition, the vulnerability of victims who are still dependent on the perpetrator, both financially and psychologically, is also a factor that causes victims to be reluctant or afraid to report the act of violence.²⁸

Domestic violence can occur in both registered and unregistered marriages. However, women who are in unregistered marriages generally face a higher level of vulnerability because their marital relationship has not been officially recognized. The absence of marriage registration results in reduced legal certainty for the relationship, making women's legal position weaker and vulnerable to various forms of rights violations. In such conditions, it is easier for husbands to avoid legal responsibility, ignore obligations to their wives, and even commit arbitrary actions because there is no administrative evidence that strengthens the existence of the marital relationship. This situation ultimately increases the obstacles faced by victims in obtaining legal protection and demanding accountability from the perpetrators.²⁹

The handling of cases of domestic violence that occurs in marriages that have been officially recorded still often faces various obstacles, even though the legal status of the marriage is not in question. This condition certainly becomes more complex if the violence occurs in an unregistered marriage, because the victim is also faced with administrative problems related to proving the marital relationship. As a result, women as victims of domestic violence in unrecorded marriages face greater obstacles in obtaining legal protection and fighting for their rights compared to victims in marriages that are administratively recognized by the state.³⁰

One of the main obstacles comes from the victim's own condition. Women who experience domestic violence in an unincorporated marriage are often reluctant to report the events they experience because of shame or think that both rough treatment and marital status are problems that must be hidden from society. In addition, economic considerations are also a factor that influences the victim's decision not to pursue the legal route. In many cases, the perpetrator is the main source of family income, so the victim is worried that the legal process will have an impact on the economic sustainability of the household. Victims also often feel unprepared to face the role of a single parent as well as being the main person responsible for the family's needs if the perpetrator is sentenced to criminal sanctions. In addition to these factors, the victim's low knowledge of the legal rights they have also hinders the law enforcement process. This limited understanding causes some victims to choose not to report the violence they experienced or to withdraw the report that has been submitted before the legal process is completed.³¹

The next obstacle is related to legal and administrative aspects that arise due to the absence of state recognition of unregistered marriages. The absence of legal status affects the process of handling cases of violence experienced by victims. In practice, acts of violence that occur in unregistered marriages are often not processed as a crime

²⁸ Nurazki Aslamiah et al., "Kekerasan Dalam Rumah Tangga Sebagai Alasan Pemicu Perceraian Di Pengadilan Agama Bandung Kelas 1A," *Al-Mashlahah Jurnal Hukum Islam dan Pranata Sosial* 11, no. 02 (2023), <https://doi.org/10.30868/am.v11i02.5350>.

²⁹ Addin Daniar Syamdan and Djumadi Djumadi Purwoatmodjo, "Aspek Hukum Perkawinan Siri Dan Akibat Hukumnya," *Notarius* 12, no. 1 (2019): 452–66.

³⁰ Natasha Emmanuella Riyanto et al., "Perlindungan Hukum dan Pemenuhan Hak Perempuan Korban Kekerasan dalam Rumah Tangga dari Perkawinan yang Tidak Dicatatkan," *Progressive Law and Society* 3, no. 2 (2025), <https://doi.org/https://doi.org/10.14710/pls.26154>.

³¹ *Ibid.*

of domestic violence, but are qualified as acts of persecution based on the provisions of the Criminal Code. This condition shows that there is still a void and unclear legal arrangements in providing protection to women victims of domestic violence who are in unrecorded marriage. In addition, the law enforcement approach that tends to be dominated by law enforcement officials who are still fixated on the aspect of formal legality tends to be based on the administrative status of the marriage. As a result, the substance of the violence experienced by the victim is often not the main consideration, so that the application of the provisions of the PKDRT Law to the case has not been carried out optimally.³²

In addition to obstacles stemming from juridical and administrative aspects, the effectiveness of the implementation of legal protection is also influenced by the still strong roots of patriarchal values in society. This mindset perpetuates the assumption that the husband is in full control of the household, while the wife is required to always submit to the will of the partner. This mistaken view results in the forced intercourse in marriage which is often not considered a sexual crime, but is considered something common in domestic life. This condition results in many victims preferring to remain silent and reluctant to complain about the dark events that befall them due to the fear of being considered contrary to family values, labeled as wives who do not carry out their obligations, or considered to tarnish the honor of the family. It is not uncommon for victims to face the practice of *victim blaming*, which is the tendency to blame the victim for the violence that befalls them. This situation further complicates the law enforcement process while hindering the enforcement of victims' rights to obtain legal security guarantees and equal opportunities to access justice.

Another obstacle that is still faced is related to the lack of optimal efforts to prevent and handle domestic violence, which indicates that legal security procedures for victims have not been optimally implemented. Even though various juridical tools have been passed, their implementation is still not able to provide comprehensive protection for victims. One of the variables underlying this situation is the limited understanding and sensitivity of law enforcement officials to the gender perspective in handling domestic violence cases. In fact, the gender perspective has an important role in identifying power relations inequality in the household which is often the cause of violence. In addition, survivors still often encounter obstacles in their efforts to obtain legal assistance and access to psychosocial assistance services, as well as various other forms of support, especially for victims who come from vulnerable groups or live in areas that do not have adequate service facilities. This problem is exacerbated by ineffective coordination between agencies, such as the police, prosecutor's office, courts, and correctional institutions, so that the process of handling cases is often slow and does not provide optimal protection to victims.³³

In addition, limited access to health services, legal assistance, psychological assistance, and safe houses (shelters) are also obstacles that hinder the process of protection and recovery of victims. These obstacles are increasingly felt by women who are victims of rape in unregistered marriages, because they often face administrative problems when accessing various protection services organized by the state. This condition causes efforts to fulfill the rights of victims, both in obtaining legal protection,

³² *Ibid.*

³³ Mahdy and Samsul Arifin, "Sinergi 4 Pilar Penegakan Hukum Dalam Memberikan Perlindungan Hukum Terhadap Korban Kekerasan Dalam Rumah Tangga," *ACADEMOS Jurnal Hukum Dan Tataan Sosial* 4, no. 1 (2025), <https://doi.org/10.30651/aca.v4i1.26736>.

restoration, and access to justice, cannot be carried out optimally when compared to victims in officially registered marriages.

Based on this description, it can be understood that the implementation of legal protection for women who are victims of rape in unregistered marriages still faces various obstacles that are complex and multidimensional. These obstacles not only come from weak legal arrangements and administrative problems due to the absence of marriage registration, but are also triggered by a strong patriarchal culture, lack of legal awareness in society, narrow space for victims to reach protection and rehabilitation facilities, and not the optimal performance of law enforcement officials and related agencies in providing real protection. All of these obstacles result in various protection rules that have been enshrined in various laws that have not been able to be implemented optimally. As a result, women who are victims of rape in unregistered marriages still do not receive optimal legal protection guarantees in practice.

CONCLUSION

Based on the results of the research, it can be concluded that the legal system in Indonesia has actually contained a legal foundation to ensure the safety of women who have experienced marital rape, through the PKDRT Law, the TPKS Law, and the Criminal Code. In essence, the three regulations have recognized and provided certainty of legal protection for all survivors of sexual violence, including acts of forced intimate relations that take place within the scope of the household. However, the implementation of legal protection has not been fully effective, especially for women who are in unregistered marriages. The absence of administrative recognition of marriage often causes difficulties in proving the legal relationship between victims and perpetrators, thus having an impact on hindering victims' access to legal protection, mentoring services, and the fulfillment of their rights as victims.

This study also shows that the effectiveness of legal protection is still influenced by various multidimensional obstacles. These obstacles include factors that come from the victim, such as shame, economic dependence, and low understanding of legal rights; juridical and administrative obstacles arising from the non-recognition of unregistered marriages; the strong patriarchal culture that normalizes the forced sexual relations in marriage; and the lack of optimal law enforcement system which is characterized by limited implementation of gender perspectives, weak coordination between agencies, and inadequate access to legal assistance, health services, psychological assistance, and shelters. Thus, much more comprehensive steps are needed through improving regulations, strengthening the capacity of law enforcement officials, and increasing synergy between institutions so that the implementation of legal protection for victims can be carried out more effectively, as well as expanding access to victim protection and recovery services so that the rights of women victims of rape in marriage can be protected effectively, fairly, and oriented to the interests of the victim. These efforts are essentially in line with the goals of sharia (maqasid al-shari'ah) which places the benefit and prevention of harm as the main principles in human protection. Thus, the protection of women victims of rape in marriage is not only the fulfillment of the state's legal obligations, but also part of efforts to realize the goals of sharia through the protection of the soul, intellect, offspring, and other aspects of human life.

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