

## THE MARITAL RAPE PHENOMENON AS A FORM OF GENDER OPPRESSION: AN ANALYSIS OF THE URGENCY OF SEXUAL CONSENT MUBĀDALAH'S PERSPECTIVE

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### Abstract

Many women continue to face cases of sexual abuse in biological relationships between husband and wife, sometimes known as marital rape. This phenomenon is often considered taboo to be discussed, conveyed, and addressed. So in turn, the phenomenon of marital rape becomes a problem that cannot be resolved immediately. In particular, the main question in this research is how Islamic law views the phenomenon of marital rape in husband-and-wife relations and whether the urgency of sexual consent from the mubadalah perspective is a step to prevent marital rape. This research is included in the category of library research with a qualitative approach, data collection techniques with documentation types, data processing techniques with descriptive-analytic methods, and an analytical framework with mubadalah theory. The results of this study show that the act of marital rape due to unequal sexual relations between husband and wife is part of an act of violence, both physically and psychologically. Islam prohibits sexual intercourse through coercion and violence. Husband-wife relationships in any condition must have an element of pleasure from each party, meaning that there should be no coercion from both. Thus, sexual consent education needs to be pursued to become a preventive spirit and safe behaviour for instilling a foundation of mutual respect between individuals. This is expected to pave the way for married couples to enjoy a healthy and happy relationship for both parties.

**Keywords:** Marital Rape, Mubādalāh, Sexual Consent, Sexual Violence

### Abstrak

*Kasus kekerasan seksual dalam hubungan biologis pasangan suami istri atau dikenal dengan marital rape masih banyak dialami oleh perempuan. Fenomena ini sering dianggap tabu untuk dibicarakan, disampaikan dan disikapi. Sehingga pada gilirannya fenomena marital rape menjadi permasalahan yang tidak segera ditanggulangi. Secara spesifik, pertanyaan utama dalam penelitian ini ialah bagaimana hukum Islam memandang fenomena marital rape dalam hubungan suami istri dan bagaimana urgensi sexual consent perspektif mubadalah sebagai upaya preventif terjadinya marital rape. Kajian ini termasuk pada kategori penelitian kepustakaan dengan pendekatan kualitatif, teknik pengumpulan data jenis dokumentasi, teknik pengolahan data dengan metode deskriptif-analisis, dan kerangka analisa dengan teori mubadalah. Hasil dari penelitian ini adalah bahwa tindakan marital rape akibat hubungan seksual yang tidak seimbang antara suami istri merupakan bagian dari tindakan kekerasan, baik secara fisik maupun psikis. Islam melarang hubungan seksual dengan paksaan dan kekerasan. Hubungan suami istri dalam kondisi apapun harus ada unsur kesenangan dari masing-masing pihak, artinya tidak boleh ada unsur paksaan dari keduanya. Dengan demikian, pendidikan sexual consent perlu diupayakan guna menjadi semangat preventif dan safe behaviour dalam menanamkan landasan saling menghargai antar individu. Hal ini diharapkan mampu membuka jalan untuk pasangan suami istri agar dapat menikmati hubungan yang sehat dan membahagiakan bagi kedua belah pihak.*

**Kata Kunci:** Kekerasan Seksual, Marital Rape, Mubādalāh, Sexual Consen

## Introduction

Acts of domestic violence can happen to anyone, be it husband or wife, from children to adults. However, what is often of public concern is violence on the part of women, both wives and children<sup>1</sup> Law Number 23 of 2004 concerning the Elimination of Domestic Violence (hereinafter referred to as the Law on Domestic Violence) was passed by the House of Representatives of the Republic of Indonesia on September 22, 2004. The decision was in reaction to the escalation of domestic violence, which is considered to be increasing. One form of domestic violence that is mentioned positivistically in the Law on Domestic Violence is internal sexual violence between husband and wife. Coercion of sexual contact between husband and wife, from a modern legal standpoint, is usually referred to as marital rape.<sup>2</sup>

Violence is a form of action that is more physical and results in injury, disability, pain, or suffering for others. One element that needs to be considered is coercion, unwillingness, or lack of consent from the injured party.<sup>3</sup> The act is categorized as a crime whose perpetrator is threatened with criminal law.<sup>4</sup>

The Ministry of Women's Empowerment and Child Protection (KemenPPA) reported that since January 1, 2023, until now (real time), September 28, 2023, there have been 19,615 cases. Including verified data and unverified data, namely data inputted in the current month. The number of cases was dominated by female victims—as many as 17,366 people—and 2,991 other victims

of violence were male victims. The Ministry of PPA also noted that many perpetrators of violence occurred in the closest people's environment. A total of 2,204 perpetrators had relationships as girlfriends or friends with victims and followed perpetrators of violence from husbands or wives and families, both parents and siblings, in as many as 6,726 cases.<sup>5</sup> However, this does not rule out the possibility that various other cases will continue to occur.

The report shows that cases of sexual violence in biological relationships between married couples, known as marital rape, are still widely experienced by women. However, in reality, this phenomenon is often considered taboo to talk about, convey, or address. So, in turn, the phenomenon of marital rape is ruled out and even becomes a problem that is not immediately addressed. Moreover, people who are still thick with patriarchal culture use religious texts as a reference for the permissibility of these actions. One of them is the very popular Shahih hadith, which is about the curse of angels on wives who refuse their husbands' invitation to have sex. Interpretation narratives that are misunderstood by society generally make religion seem biased, lame, and only in favour of men.<sup>6</sup>

The understanding of the function of women, who are seen as satisfying men's biological needs, is influenced by the male perspective that marriage is only a means of fulfilling biological needs.<sup>7</sup> Therefore, married couples must understand the importance of sexual consent to

<sup>1</sup> Khairul Akbar, dkk “Marital Rape Dalam Perspektif Hukum Positif Indonesia Dan Hukum Islam,” *Mitsaq: Islamic Family Law Journal* 02, no. 01 (2023): 41–56.

<sup>2</sup> Ardiansyah, “Kekerasan Seksual Dalam Rumah Tangga (Studi Komparasi Hukum Islam Dan Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga),” *Qiyas: Jurnal Hukum Islam Dan Peradilan* 01, no. 01 (2016): 79–92.

<sup>3</sup> dkk Manumpahi, Edwin, “Kajian Kekerasan Dalam Rumah Tangga Terhadap Psikologi Anak Di Desa Soakonora Kecamatan Jailolo Kabupaten Halmahera Barat,” *E-Journal: Acta Diurna* V, no. 01 (2016): 1–5.

<sup>4</sup> Zikri Darussamin, “Marital Rape Sebagai Alasan Perceraian Dalam Kajian Maqāṣid Syarīʿah,” *Al-Abwal* 12,

no. 1 (2019): 84–98, <https://ejournal.uin-suka.ac.id/syariah/Ahwal/article/view/1727/1599>.

<sup>5</sup> SIMFONI-PPA, “Peta Sebaran Jumlah Kasus Kekerasan Menurut Provinsi,” Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, 2023, <https://kekerasan.kemenpppa.go.id/ringkasan>.

<sup>6</sup> Faqih Abdul Kodir, “Hadits Laknat Malaikat Terhadap Istri Yang Menolak Melayani Seks Suami: Pendekatan Psikologi Mubadalah,” *Mubadalah.id*, 2020, <https://mubadalah.id/hadits-laknat-malaikat-terhadap-istri-yang-menolak-melayani-seks-suami-pendekatan-psikologi-mubadalah/>.

<sup>7</sup> Cucu Solihah and Mia Amalia, “Marital Rape (Kekerasan Seksual Dalam Perkawinan) Perspektif Budaya Hukum Dan Undang-Undang Nomor 23 Tahun 2004 Tentang PKDRT” 15, no. 1 (2022): 149–76.

have sexual intercourse. Although in general, people assume that sexual relations in marriage are legal, under any circumstances, sexual consent is often ignored. However, this situation is very detrimental to women because most men are unable to withhold their martyrdom while women are led to serve. Thus, the phenomenon of marital rape is no longer a problem between individuals but is seen as a social problem, even as a form of gender oppression. Because forced intercourse in an inhumane way against the wife will cause suffering, both physically and psychologically.

There have been several previous studies that discuss similar themes, both related to the phenomenon of marital rape and sexual consent. Among them, first, a study written by Riskayanti entitled "Marital Rape as a Criminal Act in the Bill-Elimination of Sexual Violence" explains that the exclusion of marital rape as a criminal offence as contained in Article 285 WvS (the Dutch criminal code later applied in Indonesia) is acceptable because of the existing patriarchal system.<sup>8</sup> Second, an article entitled "The Marital Rape Phenomenon: Law and Its Consequences in an Islamic Perspective" was written by Annisa and Riska. The phenomenon of marital rape in this case was motivated by the COVID-19 pandemic and evidenced by the increase in divorce cases.<sup>9</sup>

Third, an article entitled "Marital Rape (Sexual Violence in Marriage): Cultural Perspectives Law and Law Number 23 of 2004 Concerning Domestic Violence, written by Cucu and friends.<sup>10</sup> Included in this category is a study

entitled "Marital Rape as Domestic Violence in the Perspective of Indonesian Islamic and Positive Law," written by Listya, Dede, and Usep, and Ahmad Tsalis study entitled "Marital Rape as the Power Politics of Sexual Relations in Indonesia in the Perspective of Kate Millet's Feminism."<sup>11</sup> and Aldila and Surarto's study entitled "Marital Rape Formulation Policy Based on Gender Justice in Indonesia"<sup>12</sup>

Fourth, the study of marital rape as a reason for divorce, entitled "Marital Rape as a Reason for Divorce in the Study of Maqāṣid Sharī'ah" by Zikri<sup>13</sup> and "Marital Rape as a Reason for Divorce in the Study of Mubakan Faqihuddin Abdul Kodir" by Uswatun.<sup>14</sup> Fifth, an article entitled "Sexual Consent Education Perspectives on the Objectives of National Education and Islamic Education (Type of Study Text of the 2016 Bill P-KS Chapter I Article 1 Paragraph 1)" written by Ela emphasised that sexual education in school students needs to be conveyed, but "Sexual consent education" must be rejected because it is very contrary to the objectives of National Education.<sup>15</sup>

Based on the above problems, the main question to be discussed in this study is: first, how does Islamic law view the phenomenon of marital rape in husband-and-wife relationships? Second, what is the urgency of sexual consent from a mubakan perspective as an effort to prevent marital rape? Understanding marital rape and Islamic legal perspectives on gender justice and human rights protection in the domestic context is

<sup>8</sup> Riskyanti Juniver Siburian, "Marital Rape Sebagai Tindak Pidana Dalam RUU-Penghapusan Kekerasan Seksual," *Jurnal Yuridis* 7, no. 1 (2020): 149, <https://doi.org/10.35586/jjur.v7i1.1107>.

<sup>9</sup> Annisa Qurrota Aini, "Fenomena Marital Rape: Hukum Dan Konsekuensinya Dalam Perspektif Islam," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 07, no. 01 (2022): 1–10.

<sup>10</sup> Solihah and Amalia, "Marital Rape (Kekerasan Seksual Dalam Perkawinan) Perspektif Budaya Hukum Dan Undang-Undang Nomor 23 Tahun 2004 Tentang PKDRT.," *Palastren: Jurnal Studi Gender* 15, no. 01 (2022): 150.

<sup>11</sup> Ahmad Tsalis, "Marital Rape Sebagai Politik Kuasa Relasi Seksual Di Indonesia Dalam Perspektif Feminisme Kate Millet," 2021, 397346.

<sup>12</sup> Litya Surisdani Anggraeniko, Dede Kania, and Usep Saepulloh, "Marital Rape Sebagai Suatu Kekerasan Dalam Rumah Tangga Dalam Prespektif Hukum Islam Dan Positif Indonesia," *Ayy-Syari'ah* 24, no. 1 (2022): 163–78, <https://doi.org/10.15575/as.v24i1.18453>.

<sup>13</sup> Darussamin, "Marital Rape Sebagai Alasan Perceraian Dalam Kajian Maqāṣid Syarī'ah," 2019.

<sup>14</sup> Uswatun Khasanah, "Marital Rape Sebagai Alasan Perceraian Dalam Kajian Mubadalah," no. 1 (2023): 89–107.

<sup>15</sup> Ela Hodijah N, "Pendidikan Sexual Consent Perspektif Tujuan Pendidikan Nasional Dan Pendidikan Islam (Jenis Studi Teks Draft RUU P-KS Tahun 2016 BAB I Pasal 1 Ayat 1)," *Al-Mujaddid: Jurnal Ilmu-Ilmu Agama* 03, no. 01 (2021): 1–20.

important to be studied in depth. In this case, the urgency of sexual consent from a mubadalah perspective is the basis for encouraging awareness of the importance of consent in every sexual relationship. This not only strengthens preventive measures against the occurrence of domestic violence but also strengthens the values of equality, mutual respect, and justice in husband-and-wife relationships.

## Methods

This study is included in the category of library research using a qualitative approach. The primary data sources in this study are the book *Fiqh Islam Wa Adillatuhu* by Wahbah Az-Zuhaili and the book *Women Not Domestic Beings* by Faqihuddin Abdul Kodir. As for secondary sources in the form of literature relevant to the discussion in this study, both in the form of articles, journals, books, theses, and website articles with the keywords marital rape and sexual consent, The method of tracking data sources used in this study is documentation-type data collection. Once collected, the data is processed with a descriptive-analysis model. The theory of analysis that is the main basis of this research is the theory of mubādalāh, initiated by Faqihuddin Abdul Kodir. Mubādalāh theory proved to be an effective tool in addressing gender issues and various household problems, as in this study.

## Results and Discussion

### *An Overview of the Marital Rape Phenomenon as a Form of Gender Oppression*

Marital rape is a term from English, namely marital, which means everything related to marriage (relating to or connected with the status of marriage), and rape, which means rape. The word rape itself refers to sexual intercourse (either vaginally or anally) with a woman or man without their consent. (Sexual intercourse,[vaginal or anal] with a woman or another man without their consent).<sup>16</sup> The definition of marital rape is "rape committed by the person to whom the victim is married".<sup>17</sup> Rape in this case is the coercion of sexual activity against the partner, both by husband and wife. At first glance, the term marital rape contains contradictions in meaning because, until now, there has been an assumption that rape is only possible outside of marriage. However, this type of sexual violence affects wives in various parts of the world, including Indonesia.<sup>18</sup>

The phenomenon of marital rape is the result of unbalanced sexual relations between husband and wife. For example, the understanding that intercourse is the wife's obligation or husband's right, not both an obligation and a right of both, As a result, the husband is considered to be able to force himself to get his rights.<sup>19</sup> While women tend to be silent and live this as a form of obedience of a wife to her husband, thus, when a sexual act with a motive for rape occurs, the wife cannot complain to the authorities.<sup>20</sup>

Sexual violence occurs in all walks of life, not only against women but also against men. However, the tendency towards sexual violence against women is higher than that against men.<sup>21</sup>

<sup>16</sup> Darussamin, "Marital Rape Sebagai Alasan Perceraian Dalam Kajian Maqāṣid Syarī'Ah," *Jurnal Al-Abwal* 12, no. 01 (2019): 84–96.

<sup>17</sup> Silvia Nahla Sari and Muhammad Rosyid Ridho, "Maritale Rape Dalam Perspektif Qira' Ah Mubādalāh Dan Undang-Undang Tindak Pidana Kekerasan Seksual" 01, no. 2 (2023): 1–9.

<sup>18</sup> Nur Rofiah, "Perkosaan Dalam Perkawinan Perspektif Islam," *Mubadalah.id*, 2023, <https://mubadalah.id/perkosaan-dalam-perkawinan-perspektif-islam/>.

<sup>19</sup> Fimela, "Pandangan Islam Terhadap Perkosaan Dalam Pernikahan," *Lifestyle*, 2023, <https://www.fimela.com/lifestyle/read/3777230/pandang-an-islam-terhadap-perkosaan-dalam-pernikahan>.

<sup>20</sup> Trijayanti Putri Andayani and Nurul Hidayat, "The Sexual Negotiation Space of Women in the Marital Rape in Jember," *Jurnal ENTITAS SOSIOLOGI* 8, no. 2 (2019): 53, <https://doi.org/10.19184/jes.v8i2.16651>.

<sup>21</sup> Nurul Ilmi Idrus, *Marital Rape: (Kekerasan Seksual Dalam Perkawinan)* (Yogyakarta: Pusat Penelitian Kependudukan UGM, 1999),

According to the National Commission on Violence against Women (Komnas Perempuan), from the perspective of the victim, marital rape is violence against wives in the form of forcing sexual relations inhumanely and causing suffering.<sup>22</sup> Therefore, this act is included in sexual violence. The law on sexual violence, both outside and inside marriage, is haram. This was affirmed in the religious deliberations of the Indonesian Women Ulema Congress (KUPI) on April 25–27, 2017 in Pondok Jambu, Cirebon, and West Java. This religious stance became an important milestone in Islamic discourse on marital rape.<sup>23</sup>

Marital rape can be classified into several forms, including first, obsessive rape is when someone receives sadistic treatment from their partner during sexual intercourse. For example, by hitting, strangling, or using other tools that threaten the partner physically and psychologically. Second, force-only rape, which is someone who threatens his partner by using power and force to coerce and threaten his partner to want to have sexual intercourse, is done even though previously rejected. Third, battering rape occurs when a couple experiences both physical and sexual aggression while having sexual intercourse.<sup>24</sup>

Reporting from the women's talk site, Midwife Septri, a Bekasi family planning counselor, received a complaint from a patient in 2016 regarding a case of torture committed by her husband. The victim is often forced to have sex, causing injuries to the victim's genitals and bruises on the thighs. In 2019, a wife in Tanjung Priok suffered injuries to her neck and arms due to an attack from her husband. The assault using sharp

weapons was caused by a wife refusing an invitation to have sex. Furthermore, the viral case in 2021 happened to Taqy Maliq's father's serial wife, Marlina Octoria. She asked for a divorce from her husband, Mansyardin Malik, for forcing her to have sex 10 times a day.<sup>25</sup> This phenomenon is proof that marital rape is real.

Marital rape will have tremendous repercussions for victims and those around them. Especially from the point of view of society, which sometimes ignores and trivialises situations like this, it will only increase the suffering of the victims.<sup>26</sup> People's understanding of cases of violence is only limited to rough, violent and cruel physical actions and behaviors. However, related behaviors with psychological suppression and oppression are considered not part of violence. While marital rape is an act of violence carried out both physically and psychologically, so that the impact of these actions not only threatens the condition of the household but also has an impact on other things, including physical injuries, psychological injuries, and loss of harmony in the household.<sup>27</sup> As stated in Article 1 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence (UU-PKDRT), it is interpreted as follows:

*"Domestic violence is a variety of forms of violence that occur in family relationships, where the perpetrator and victim have certain closeness. This includes abuse of wives, ex-wives, fiancées, biological children, and stepchildren, abuse of parents, sexual assault, or rape by family members."*

The article identifies that domestic violence involves various forms of violence that occur in family relationships, one of which is the phenomenon of marital rape. Although in some

[https://perpustakaan.komnasperempuan.go.id/web/index.php?p=show\\_detail&id=2475](https://perpustakaan.komnasperempuan.go.id/web/index.php?p=show_detail&id=2475).

<sup>22</sup> Tabayyun Pasinringi, "Marital Rape Dan 'Consent' Dalam Pernikahan," Magdalene, 2021, <https://magdalene.co/story/magdalene-primer-marital-rape-dan-consent-dalam-pernikahan/>.

<sup>23</sup> Nur Rofiah, "Perkosaan Dalam Perkawinan Perspektif Islam."

<sup>24</sup> Anggraeniko, Kania, dan Saepulloh, "Marital Rape Sebagai Suatu Kekerasan Dalam Rumah Tangga Dalam Prespektif Hukum Islam Dan Positif Indonesia."

<sup>25</sup> Bincang Perempuan, "Marital Rape: Bingkai Hukum Di Indonesia," Bincangperempuan.com, 2023, <https://bincangperempuan.com/marital-rape-dalam-bingkai-hukum-di-indonesia/>.

<sup>26</sup> Khairul Akbar, "Marital Rape Dalam Perspektif Hukum Positif Indonesia Dan Hukum Islam."

<sup>27</sup> Anggraeniko, Kania, dan Saepulloh, "Marital Rape Sebagai Suatu Kekerasan Dalam Rumah Tangga Dalam Prespektif Hukum Islam Dan Positif Indonesia."

societies there is still a view that husbands have the right to have sexual relations with their wives without consent, including in this domestic violence law, this is considered an unacceptable form of sexual violence in marital relations. Thus, it is clear that any form of sexual violence, including that which occurs in a domestic context, constitutes a violation of human rights and gender justice.

### Marital Rape Viewed from the Perspective of Islamic Law

At the conception level, Islam does not recognise the concept of marital rape. However, Islam forbids sexual intercourse through coercion and violence. The law of origin of sexual relations is haram, unless someone changes it, namely the marriage contract. Akad gives birth to many things related to rights and obligations, one of which is related to sexual relations that are jointly owned, both by wives and husbands.<sup>28</sup> It is permissible for each party to have fun with his or her partner, as far as Sharia permits and as long as there are no hindrances. These halal include: 1) halal intercourse through the front rather than back lane; 2) halal to see and hold it from head to toe; and 3) may enjoy. It is a privilege for the husband to enjoy the benefits of the wife's genitals and other organs as compensation for the dowry that must be spent by the man.<sup>29</sup>

In the book of jurisprudence, the word rape is known as al-ightisab al-mar'ah or al-ikrah 'ala al-zina, which is intercourse with a woman who is not bound by forced marriage. Although rape is also defined as adultery, the two are certainly different. Rape is a physical assault that injures the body. If the victim tries to resist, the rapist will force him no matter what happens and even does not

hesitate to kill the victim. Rape also damages psychology because the victim will be traumatized and robbed of her honor.<sup>30</sup> The difference between rape inside and outside marriage lies only in the status between the perpetrator and the victim. However, marital rape is very difficult to detect because the legal status of marriage considers the husband entitled to have sexual relations with his wife according to his wishes. The husband ignored any indication of actual coercion, including rape.<sup>31</sup>

The term al-ightisab al-mar'ah or al-ikrah 'ala al-zina has the focal point of the word al-Ikraah, which etymologically means to tell another person to do something he does not like by force. According to the terminology of jurisprudence, al-Ikraah is the act of encouraging others to do something they do not like, and if left unchecked, do not have the will and do not choose to do it.<sup>32</sup> In short, al-Ikraah is an act of coercion. There are two categories, namely ikrah mulji' (severe coercion) and ikrah ghairu mulji' (light coercion). Ikrah mulji' is coercion that removes the element of power and freedom with a threat to the safety of life. While ikrah ghairu mulji' is a non-life-threatening compulsion, this type of coercion only removes the element of volunteering but does not eliminate the element of free will.<sup>33</sup>

Wahbah Al-Zuhaili explained eleven conditions that something can be called al-ikrah. As for those related to the rape of the husband against the wife, namely: first, the coercion is able to carry out his threats; second, the coerced party has a strong suspicion that if he does not do what is forced, then the coercive party will realize his threat; second, coercion contains a threat to life; third, before there is coercion, the coerced party does not want to do what is forced on him; and the

<sup>28</sup> Anggraeniko, Kania, dan Saepulloh.

<sup>29</sup> Wahbah Az-Zuhaili, *Fiqih Islam Wa Adillatuhu*, Terj. Abdul Hayyie Al-Kattani, Dkk, Jilid 9 (Jakarta: Gema Insani, 2011), 96.

<sup>30</sup> Muhammad Khoirul Anwar, Aghnia Nuha Zahidah, and Khildaniyah Ridho, "Perspektif Islam Terhadap Pemerkosaan Dalam Pernikahan," *Al Burhan: Jurnal Kajian Ilmu Dan Pengembangan Budaya Al-Qur'an* 21, no.

02 (2022): 255–66, <https://doi.org/10.53828/alburhan.v21i02.385>.

<sup>31</sup> "Pemikiran Wahbah Al-Zuhaili Tentang Pemerkosaan Suami Terhadap Istri," n.d., [https://repository.uinbanten.ac.id/8109/6/BAB\\_IV.pdf](https://repository.uinbanten.ac.id/8109/6/BAB_IV.pdf).

<sup>32</sup> Wahbah Az-Zuhaili, *Fiqih Islam Wa Adillatuhu*, Terj. Abdul Hayyie Al-Kattani, Dkk, Jilid 6 (Jakarta: Gema Insani, 2011), 341.

<sup>33</sup> Az-Zuhaili, *Fiqih Islam Wa Adillatuhu*, 342.

four threats are something that should not be done by the coercive party.<sup>34</sup>

Marital status is the basis on which the husband has the right to have sexual relations with his wife, but within the limits prescribed according to Islamic teachings. Wahbah Al-Zuhaili explained that every married couple should treat each other with kindness. For example, accompany the partner well and do not commit acts of abuse. As Allah Almighty says in Sura an-Nisa verse 19:

*"And associate with them properly."<sup>35</sup> and the Prophet (peace be upon him) said: "You are the kindest to his family, and I am the kindest among you to my family." Thus, a husband is not encouraged to have sexual relations with his wife, except in a good way.<sup>36</sup>*

Wahbah Az-Zuhaili also emphasised that the relationship between husband and wife under any conditions must have an element of pleasure from each party, meaning that there must be no element of coercion either from the husband to the wife or vice versa.<sup>37</sup> Thus, marital rape with indications of coercion shows no conformity with the thoughts of Wahbah Az-Zuhaili in the relationship of married couples. If a wife feels that she will be abused by her husband, then a refusal to have sexual intercourse can be justified. The wife must have the courage to express her objections, while the husband must be willing to listen and consider them.

However, in practice, there are still many societies that consider that husbands have the right to rape their wives. This is due to social and cultural factors that hold that women should submit to their husbands and do not have the right to refuse sexual relations. Other influencing factors include patriarchal systems that reinforce male dominance, gender injustices that restrict women's rights, and a lack of education and awareness about women's rights. Therefore, efforts are needed to increase public awareness

about the importance of respecting women's rights in marriage and preventing acts of sexual violence.

### **The Urgency of Sexual Consent: Mubadalah's Perspective as a Preventive Effort for Marital Rape**

It should be emphasised that any act that opens up sexual relations outside of marriage is haram. Similarly, sexual consent in all types of sexual relations outside marriage is also punished as haram. This is clear in the teachings of Islam. None of the clerical opinions allow it, except through slavery, which has now also been abolished. The concept of willingness to have sexual relations or sexual consent is directed at the context of the relationship between husband and wife, which is halal. Sexual consent in marriage is one of the principles for improving the quality of sexual relations that make both parties happy.

This is closely related to the concept of mubādalāh, which is a perspective and understanding of a certain relationship between two parties that contains the value and spirit of partnership, cooperation, interconnection, reciprocity, and the principle of reciprocity. Both the relations between man in general, the state and the people, employers and workers, parents and children, teachers and students, the majority and the minority; between men and men, or between women and women, between individuals and society. However, in this study, the mubādalāh perspective focused on male and female relations in husband-and-wife relationships.<sup>38</sup>

Keep in mind that this concept of mubādalāh will not help overcome marital rape that has already occurred, but it can help reduce the likelihood of marital rape by promoting relationships based on equality, mutual respect, and consent in conjugal relationships. By understanding and applying this concept, husband-and-wife relationships become healthier and more dignified. So any sexual relationship

<sup>34</sup> Az-Zuhaili, *Fiqih Islam wa Adillatuhu*, 343-345.

<sup>35</sup> Az-Zuhaili, *Fiqih Islam wa Adillatuhu*, 294.

<sup>36</sup> Az-Zuhaili, *Fiqih Islam wa Adillatuhu*, 103.

<sup>37</sup> Az-Zuhaili, *Fiqih Islam wa Adillatuhu*, 294.

<sup>38</sup> Faqihuddin Abdul Kadir, *Qira'ah Mubadalah: Tafsir Progresif Untuk Keadilan Gender Dalam Islam* (Yogyakarta: IRCiSoD, 2019), 59.

should be based on a clear mutual agreement between both parties. There are at least five reasons why sexual consent is important to teach.<sup>39</sup>

First, the concept of sexual consent is based on Islamic teachings. This is the basis for the health of married couples' relationships. Marriage is a medium for forging love and affection that is mutually divided between husband and wife. If referring to QS. Ar-Ruum [30]: 21, in general, humans tend to seek and find a partner to get calm (sakinah) from him. A man who marries a woman hopes to get peace and comfort to guide love (mawaddah WA rahmah) and easily achieve happiness in living life in the world. Likewise with women, mubadalah, women who want to marry men expect tranquilly, tranquilly, and happiness with their husbands.<sup>40</sup> This hope will be realized if all phases of the married couple's relationship are based on mutual willingness, partnership or interconnection, and happiness of both.

Second, according to the rules of Islamic law, all married relationships are based on mutual willingness (al-ashi fi al-mubadalah, mabniyy ala al-taradhi). Any coercive action will damage the basic characteristics of a good and healthy relationship. Sexual relations between husband and wife can only be understood as a relationship if both are willing, agree, and enjoy each other. That is, both are subjects. However, if one of them becomes an object, then this is not an actual relationship and violates that rule.<sup>41</sup> Furthermore, serving and enjoying sex is part of the love energy required by married couples. So, sexual intercourse can be done anytime and anywhere as long as it pleases both parties; without compulsion or violence without disturbing others, and not in a manner prohibited by religion.<sup>42</sup>

Third, the sexual relationship of a married couple is likened to clothing, which covers, complements, and warms each other. More than that, sexual intercourse, as described in QS. Al-Baqarah [2]: 187 should be done warmly and pleasantly by the wife to her husband and by the husband to his wife.<sup>43</sup> The husband is the garment of the wife, just as the wife is the garment of the husband (hunna libaas lakum wa antum libaas lahunn). This means that in the description of mubadalah, sexual pleasure is the right of both parties, so each party is obliged to serve as well as receive blessings for the services of the other. If one party cannot be considered the most entitled when it comes to sex, then the other party must always serve whenever and wherever. However, both must think of fulfilling the couple and have the right to be fulfilled in partnership and mutual relations.<sup>44</sup> Thus, coercion necessarily violates this principle.

Fourth, in a hadith, the Prophet (peace be upon him) once analogized the sexual relations of married couples as "alms of merit" (Saheeh Muslim, no. 2376). As explained in the Qur'an, alms should not be done in a hurtful way. Thus, the sexual activity of married couples should not be carried out violently or cause pain, injury, or harm.<sup>45</sup> The Prophet (peace be upon him) says in the hadith narrated by Jabir bin Abdillah (r.a.) that mula'abah between husband and wife or mutual enjoyment of the game can occur if both agree and willingly, not because of coercion. Something good or alms must be done by a married couple in a good way, as explained in QS. Al-Baqarah [2]: 262-263.<sup>46</sup>

Fifth, the main principles of the four points described above are consent and willingness. This

<sup>39</sup> Faqihuddin Abdul Kodir, *Perempuan Bukan Makhluk Domestik: Mengaji Hadis Pernikahan Dan Pengasuhan Dengan Metode Mubadalah* (Bandung: Afkaruna.id, 2022), 81.

<sup>40</sup> Kadir, *Qira'ab Mubadalah: Tafsir Progresif Untuk Keadilan Gender Dalam Islam*, 333.

<sup>41</sup> Kodir, *Perempuan Bukan Makhluk Domestik: Mengaji Hadis Pernikahan Dan Pengasuhan Dengan Metode Mubadalah*, 82.

<sup>42</sup> Faqihuddin Abdul Kodir, *Perempuan Bukan Sumber Fitnah: Mengaji Ulang Hadis Dengan Metode Mubadalah* (Bandung: Afkaruna.id, 2021), 200.

<sup>43</sup> Kodir, *Perempuan Bukan Sumber Fitnah: Mengaji Ulang Hadis Dengan Metode Mubadalah*, 82.

<sup>44</sup> Kodir, *Qira'ab Mubadalah: Tafsir Progresif Untuk Keadilan Gender Dalam Islam*, 382.

<sup>45</sup> Kodir, *Qira'ab Mubadalah: Tafsir Progresif Untuk Keadilan Gender Dalam Islam*, 385.

<sup>46</sup> Kodir, *Perempuan Bukan Makhluk Domestik: Mengaji Hadis Pernikahan Dan Pengasuhan Dengan Metode Mubadalah*, 82.



can be done by married couples if both have been educated and accustomed to doing well, not imposing their will, and always asking for approval or willingness. Education and understanding that sexual relations are consensual should be taught long before marriage takes place, so as not to lose momentum when you first enjoy them at the beginning of marriage. In addition, the basis of agreement is that if it becomes a massive common consciousness as a character of society, then it can fortify a person from all sexual crimes. This can be realised if a person views the victim as a sexual object, and it is not at all important to ask for his consent.

Based on the explanation above, sexual consent education needs to be pursued and preached in the spirit of prevention and safe behaviour to instill a foundation of mutual respect between individuals. Especially between men and women, so that each does not feel entitled to coerce and harass in any way.<sup>47</sup> This is expected to pave the way for couples to be able to enjoy a healthy and happy relationship with each other.

The goodness of life in the world and the hereafter must be achieved jointly by both parties, and then this can be likened to a shared vision of husband and wife. To make it happen, pillars are needed so that they can be achieved and felt in their lives. Referring to the verses of the Qur'an, there are five pillars to realise the vision of goodness in the household. That is, commitment to a firm bond of promise as a mandate of Allah Almighty (*mitsāqan ghalizhan*, QS. An-Nisa' [4]: 21), the principle of pairing and interconnectedness (*zawaj*, QS. Al-Baqarah [2]: 187 and QS. Ar-Rum [30]: 21), mutual comfort and willingness (*tarādhin*, QS. Al-Baqarah [2]: 233), treating each other well (*mu'āsyarah bil ma'rūf*, QS. An-Nisa' [4]: 19), and the habit of counseling each other together (*musyawarah*, QS. Al-Baqarah [2]: 233).<sup>48</sup>

## Conclusion

The phenomenon of marital rape due to unbalanced sexual relations between husband and wife is part of acts of violence, both physically and psychologically. So that the impact caused not only threatens family conditions but also has an impact on other things, such as physical injuries, psychological injuries, and loss of harmony in the household. Islam does not recognise the concept of marital rape. However, Islam forbids sexual intercourse through coercion and violence. Wahbah Az-Zuhaili also emphasised that husband-and-wife relationships under any conditions must have an element of pleasure from each party, meaning that there must be no element of coercion either from the husband to the wife or vice versa.

Principles to improve the quality of sexual relations that make married couples happy must be pursued, one of which understands sexual consent in marriage. As in the concept of *mubādalah*, namely the existence of a good relationship between two parties, which contains the value and spirit of partnership, cooperation, interconnection, reciprocity, and the principle of reciprocity, There are at least five reasons why sexual consent is important to teach, namely: first, the concept of sexual consent is following Islamic teachings; second, according to the rules of Islamic law, all married relationships are based on mutual willingness; third, the sexual relationship of a married couple is likened to clothing, which covers, complements, and warms each other; fourth, in a hadith, the Prophet (peace be upon him) once analogized the sexual relations of a married couple as alms of merit; and fifth, the main principle of the four points described above is consent and willingness.

<sup>47</sup> Kodir, *Perempuan Bukan Makhluk Domestik: Mengaji Hadis Pernikahan Dan Pengasuban Dengan Metode Mubadalah*, 83.

<sup>48</sup> Kodir, *Perempuan Bukan Makhluk Domestik: Mengaji Hadis Pernikahan Dan Pengasuban Dengan Metode Mubadalah*, 343.

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