



The Crime of Marital Rape Viewed from the Perspective of Criminal Law in Indonesia

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Article	Abstract
Keywords: Marital Rape; Crime; Evidence	<i>Marital Rape is a form of sexual violence against a wife or husband that occurs in a marital relationship. In general, sexual violence has been regulated in the construction of Indonesian criminal law, specifically (lex specialist) outlined in Law Number 8 of 2004 concerning the Elimination of Domestic Violence (UU-PKDRT). However, it is necessary to develop subject qualifications in the regulation to emphasize the elements of marital rape so that the evidence obtained is more objective. The purpose of this research is to analyze the applicability and proof of marital rape as a criminal offense of domestic violence. As a normative research, this research uses a statutory approach and conceptual approach, uses primary and secondary legal materials, and legal material collection techniques with literature studies using qualitative methods with descriptive analysis, based on these methods, a conclusion is found that marital rape can be used as one type of criminal offense of domestic violence if the evidence submitted has been recognized, but the lack of evidence makes the proof process less objective.</i>

INTRODUCTION

Marriage is a binding legal act between a man and a woman commonly called (husband and wife). In essence, in sexual relations, husband and wife have the same rights (balance between the rights and obligations of husband and wife). Ideally, intercourse is enjoyed by both as fair and equal human beings. Not intercourse that is forced by one partner only (Lumatul Aisyah and Muhammad Anis Zayadi 2022). This means that sexual intercourse should be based

on mutual consent and mutual desire, not coerced intercourse by one partner alone.

When a person forces another person to have sexual intercourse through vaginal penetration with the penis, forcibly or by violent means, it is called rape. The word "rape" in the large Indonesian dictionary means to violate or violate with violence. However, rape can be defined as the process, manner, or act of raping or violating with violence, on the other hand, the word "rape" comes from the word "rapere" which means to steal, force, seize, or carry away.

In the Big Indonesian Dictionary, "rape" is defined as the process, manner, or act of raping or violating with violence. Referring to the Criminal Code Article 286 which reads "any person who by force or threat of force forces a woman to have carnal knowledge of him outside marriage, shall, being guilty of rape, be punished by a maximum imprisonment of 12 years" this provision originates from the Dutch Criminal Code which Indonesia inherited. The words "outside marriage" contained in Article 285 of the Criminal Code make the perpetrators of the crime of domestic rape specifically in marital status cannot be punished for their actions.

According to data from the 2022 Annual Record (CATAHU) of the National Commission on Violence Against Women (Komnas Perempuan), there were 591 cases of sexual violence that occurred in marriage, known as *Marital Rape* (Komnas 2022). *Marital Rape* is taken from the word "*marital*" which means something related to marriage and "*rape*" which means *rape* (Dermawan 2004). This means that marital *rape* is an act of rape in a marital status committed by a husband against his wife or vice versa. However, all *Marital Rape* cases recorded to date are rapes committed by husbands against wives. The number of *Marital Rape* cases, which are especially committed against wives, shows that the problem of *Marital Rape* is a problem of sexual violence against wives that leads to acts of rape, because there are elements of sexual coercion. And this has a quite bad impact on the wife both physically and psychologically.

In Indonesia, there are regulations that contain elements of sexual violence that have a link with the definition of *Marital Rape*, Article 1 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence confirms that domestic violence is "Any act against a person, especially women, which results in physical, sexual, psychological and/or domestic neglect, including threats of action, coercion or unlawful deprivation of freedom in the household". It is emphasized in Article 5 of the PKDRT Law that every person is prohibited from committing domestic violence against people within the scope of their household, by: a. physical violence; b. psychological violence; c. sexual violence; or d. domestic neglect. Then in Article 8 huruf (a) jo Article of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (Law PKDRT) which states "every person is prohibited from committing domestic violence against persons within the scope of their household, one of which is sexual violence".

The forms of sexual violence in question include physical, psychological, and sexual violence. Violence can happen anywhere, anytime, and even be committed by anyone regardless of who they are and how they come from. Violence against wives is a significant social problem

that has received insufficient attention. They believe that domestic issues are taboo to discuss (Bahiej 2006). This has led to a long debate on marital rape, also known as marital *rape*. *Marital rape*, which is often experienced by many women, is often

ignored due to the view that husbands have the right to do anything to their wives and that wives must submit to their husbands, leaving some women entangled and unable to report their rape because they believe that it is not a crime and that they must do what their husbands want. Such views stem from society's belief that men have more power than women. In different situations, the husband feels powerful and has the authority to force his wife.

The elements of sexual violence contained in *marital rape* are by definition in accordance with and relevant to the provisions contained in law number 12 of 2022 concerning Criminal Acts of Sexual Violence which regulates the types of sexual crimes contained in Article 4 paragraph (2) letter (h) also states that sexual violence in the household is one form of criminal acts of sexual violence which also includes *marital rape* (Anjani and Sitepu 2023). However, in the application of cases related to the scope of the household, in principle, the use of the PKDRT law is an appropriate legal construction, but because the scope of the law is not broad enough, because it does not formulate marital rape, it means that the acts of rape that can be investigated are only outside of marriage (Isima 2021). A common understanding of marital rape is essential to raise public awareness about this crime. By providing a public explanation of marital rape, people are expected to understand that marital rape is a serious crime. They are also expected to support victims of marital rape to come forward and get justice. Based on this description, it is known that there are different views on marital rape so that it is necessary to study the process of criminalization of marital rape in Indonesia. Indonesia as a country that adheres to the Civil Law System certainly puts the law as the first source of law. So as long as a rule in the legislation is not fully defined, its application certainly cannot be implemented properly, because differences between theoretical foundations related to forced sexual intercourse in the household can affect the judge's decision to determine whether the act can be categorized as part of the crime of sexual violence or can only be used as a reason for divorce (Qadriah 2023).

Based on the definition of *marital rape* as an act of *rape* in the household, especially committed by the husband to the wife or vice versa, it has occurred in Indonesia. In Decision No: 129/Pid.Sus/2022/PN Soe, the public prosecutor and the panel of judges charged the perpetrator who committed sexual violence against his wife using Article 46 in conjunction with Article 8 of the PKDRT Law, which considers the evidence of the *Visum et Repertum* of Soe Regional Hospital Number: RSUD.35..04.01/233./2022 dated September 28, 2022 made and signed by Dr. Raymond, SpOG. with the results of the examination of the witness Suryani Manu found that there were reddish wounds at nine, eleven, thirteen o'clock around the pubic lips with no active bleeding, wounds caused by blunt force, marriage certificate and family card. Whereas if you look at the provisions in the article in Article 8 of the PKDRT Law which states "every person is prohibited from committing domestic

violence against people within the scope of their household". It is clear that the article does not classify *marital rape*. However, the verdict can strengthen the applicability of the PKDRT Law as a *lex specialist* in the crime of *marital rape*. Fundamental matters ranging from understanding, to the principle of the applicability of the Law are certainly very important in achieving legal objectives. The importance of a complete definition or regulation of *marital rape* is very influential on case disclosure, especially in proving the elements. In the context of criminal law, a precise and detailed definition of *marital rape* will assist in identifying and evaluating each element of this criminal offense. Rape cases generally rely on physical evidence and victim-witness testimonies that often come from separate environments between the perpetrator and the victim. However, in *marital rape* cases, the husband and wife live in the same neighborhood or house, where sexual relations are a normal part of marital life.

This difference makes proving marital rape cases more complex compared to ordinary rape cases. In marriage, sexual acts that should be based on consent can be misinterpreted as legitimate even without consent. This makes it difficult for victims of *marital rape* to prove that the act was committed without consent and with force or threats. The absence of complete definitions in the law complicates this situation, resulting in many cases going undiscovered or not being properly addressed by the justice system. In the court context, the lack of a complete definition also makes it difficult for judges and prosecutors to charge and convict perpetrators of *marital rape*. Without specific legal guidelines, the law enforcement process can be inconsistent, and perpetrators may not receive appropriate punishment or even misinterpret the law.

Based on the description above, sexual harassment in marriage is a criminal offense. However, both the Criminal Code and the Law on Domestic Violence as *lex specialist* or special law do not regulate in detail about domestic rape or rape committed by a husband to his wife. Therefore, the author wants to examine "Criminal Offenses and *Marital Rape* Evidence Viewed from the Perspective of Criminal Law in Indonesia".

METHOD

This research uses normative or doctrinal juridical research, namely in the form of legal behavior products because the object of study is legislation.

This research will use several research approaches including a statutory approach and a conceptual approach related to the crime of *marital rape* (domestic violence). The statutory approach determines by reviewing all laws and regulations relating to *marital rape*, especially the review of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. The conceptual approach determines and analyzes the concepts quoted from the views of experts and previous research relevant to the research raised, such as the concept of *marital rape* which includes the definition of *marital rape* in general.

Using legal research techniques obtained from information related to the implementation of laws relevant to the title relating to the problem being investigated, as well as literature studies to collect data both in the form of legal materials and legal literature related to the problems to be solved. The collected data is organized systematically so that it can be more easily read and studied. (Achmad 2022).

The research technique in this study uses a qualitative method with descriptive analysis, which descriptive analysis is to analyze data by describing or describing or interpreting data that has been collected from various sources obtained. This method is used to deeply understand the observed phenomenon and describe it in complete and structured detail. (Muhaimin 2020)

This research method is expected to produce arguments and discussions that contain values that can be used as considerations and new perspectives regarding the validity of *Marital Rape* as one of the basic offenses that can be applied objectively in answering various similar cases.

RESULTS AND DISCUSSION

A. Regulation of Marital Rape in Indonesian Criminal Law

On December 26, 2018 Haris Hasanuddin registered himself as a candidate for Head of the Regional Office of the Ministry of Religious Affairs of East Java Province. Based on letter number 01/PANSEL/12/2018, the Ministry of Religious Affairs of the Republic of Indonesia issued on December 13, 2018 announced the selection of high leadership positions within the Ministry of Religious Affairs of the Republic of Indonesia, one of which was for the position of Head of the Regional Office of the Ministry of Religious Affairs of East Java Province. One of the requirements to occupy the position is to have never been sanctioned with a moderate or severe civil servant disciplinary penalty in the last 5 (five) years. If in 2016 Haris Hasanuddin had been sentenced to civil servant disciplinary sanctions in the form of a delay in promotion for 1 (one) year, then on the background of having been sentenced to disciplinary punishment on December 27, 2018 based on Service Memorandum Number P 3651/B.II.2/Kp.00.1/12/2018 Haris Hasanuddin was declared not to have passed the administrative stage.

When a person becomes a victim of domestic violence, legal protection for the person concerned is specifically regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law). The PKDRT Law is a law that comprehensively regulates all aspects related to domestic violence, not only focusing on the punishment of perpetrators of violence within the scope of the household, but also covering aspects of prevention and recovery for victims. PKDRT Law establishes the responsibilities of the government and the obligations of the wider community in efforts to prevent and overcome domestic violence. In addition, this law also regulates the role of law enforcement and service

providers towards victims to ensure that protection and recovery for victims are effectively implemented. In Article 4, the PKDRT Law sets out the main objectives of eliminating domestic violence, which include:

1. Preventing all types of domestic violence.
2. Protecting victims of domestic violence.
3. Taking action against every perpetrator of domestic violence.
4. Maintaining the integrity and harmony of the household.

With the existence of the PKDRT Law, it is hoped that the community will be more aware of the importance of an active role in preventing and overcoming domestic violence. It also reflects the government's commitment in guaranteeing the human rights of every individual to live in a safe and prosperous environment. The implementation of the PKDRT Law requires close cooperation between various parties. The physical, sexual and psychological misery that is generally felt by victims of domestic violence as a result of threats, coercion and even unlawful deprivation of independence has made domestic violence included in various constructions of criminal law in Indonesia starting from Law Number 23 of 2004 concerning the Elimination of Domestic Violence and the latest, namely: Law Number 1 of 2023 concerning the Criminal Code. Domestic sexual violence includes any form of action that coerces or manipulates a person into unwanted sexual activity. This can include forced sexual intercourse, sexual harassment, to more extreme forms of sexual violence. This law recognizes that sexual violence is not only physical, but also has a deep and long-term psychological impact on victims. In particular, the Law also underlines the importance of support and protection for victims of domestic sexual violence. This includes

access to healthcare, legal aid, and psychological support. In addition, the law stipulates the responsibility of law enforcement to take firm action against perpetrators of sexual violence and ensure that victims get proper justice. Looking further into the rules of domestic sexual violence in Article 8 letter (a) Jo Article 5 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU-PKDRT) states "every person is prohibited from committing domestic sexual violence against people within the scope of their household". In the investigation and investigation process is mentioned as follows:

- a. Victims of domestic violence (DV) have the right to report the incident directly to the police, either at the location where the victim is located or at the place where the incident occurred, as stipulated in Article 26 Paragraph 1 of Law No. 23 Year 2004. In addition, the victim can authorize a family member or other person to report domestic violence to the police, also where the victim is located or at the scene of the incident. If the victim is a child, the report can be made by a parent, guardian, caregiver, or by the child

- themselves, in accordance with applicable laws and regulations. (Article 27 of Law No. 23 Year 2004).
- b. From the time they receive or become aware of a report of domestic violence, the police are required to provide temporary protection to the victim within 1 x 24 hours. This protection can be provided for a maximum period of 7 days from the time the victim is received or handled, in accordance with Article 16 Paragraphs 1 and 2 of Law No. 23 Year 2004. Within 24 hours after temporary protection is granted, the police must request a protection order from the court, as stipulated in Article 16 Paragraph 3 of Law No. 23 of 2004. To implement this temporary protection, the police can cooperate with health workers, social workers, volunteer assistants, and/or spiritual advisors to assist victims. (Article 17 of Law No. 23 of 2004).
 - c. In (Article 18 of Law No. 23 Year 2004) the police are obliged to provide information to the victim about the victim's right to obtain services and assistance.
 - d. After receiving a report on the occurrence of domestic violence, the police are obliged to immediately conduct an investigation upon learning or (Article 19 of Law No. 23 of 2004). The police shall immediately convey to the victim
 1. The identity of the officer for introduction to the victim;
 2. Domestic violence is a crime against human dignity; and
 3. The obligation of the police to protect victims (Article 20 of Law No. 23 Year 2004).
 - e. For perpetrators who are believed to have violated a protection order, the police are authorized to arrest and detain the perpetrator without the need for a warrant, even if the violation occurred outside the police's area of duty. However, within 1 x 24 hours of arrest and detention, the police are required to issue an arrest and detention warrant. (Article 35 Paragraphs 1 and 2 of Law No. 23 Year 2004).

As long as the elements of the offense contained in the regulation of domestic sexual violence in the article are fulfilled, the provisions in the regulation can certainly be implemented on the basis of clear legal certainty. However, in the case of *marital rape*, which defines a form of sexual violence in marital status, it is not fully defined. The lack of an explicit definition of *marital rape* in Indonesian legislation creates various legal obstacles. For example, in many cases, marital sexual relations are considered the right of the husband and wife, making it difficult to prove coercion. Without a complete definition, the intent aspect, which is an important element in criminal law, often cannot be met. This causes the process of proving the crime of *marital rape* to be very complex and tends to be ineffective.

In addition to the PKDRT Law, in general, the crime of sexual violence in the household has been regulated in several laws and regulations in Indonesia, among others:

A. Law Number 12 of 2022 on Criminal Acts of Sexual Violence (TPKS Law). The law provides a strong legal basis to take firm action against perpetrators of sexual violence, sexual violence is classified into several forms, namely:

- a. Non-physical sexual harassment
- b. Physical sexual abuse
- c. Sterilization harassment
- d. Forced marriage
- e. Sexual torture
- f. Sexual exploitation
- g. Sexual slavery
- h. Electronic-based sexual violence

In addition, Article 4 paragraph (2) criminal acts of sexual violence also include;

- a. Rape
- b. Obscene acts
- c. Copulation of children, obscene acts against children, and/or sexual exploitation of children
- d. Acts of violation of decency against the will of the victim
- e. Pornography involving children or pornography that explicitly contains violence and sexual exploitation
- f. Forced prostitution
- g. Criminal acts of trafficking in persons intended for sexual exploitation
- h. Sexual violence within the scope of the household
- i. Money laundering crime whose original criminal offense is a crime of sexual violence
- j. Other crimes that are expressly stated as crimes of sexual violence.

The TPKS Law has actually determined several categories of sexual violence, sexual violence in the household is also included in these provisions. However, there are factors that become obstacles why these rules cannot be applied, namely, there is a legal principle that states *lex specialis derogat lex generalis*, which means that more specific legal rules override more general legal rules. Marital rape, which is defined as a form of sexual violence in marital status, which means that the violence occurs within the scope of the household, makes the position of the PKDRT Law a rule that has the specificity to regulate criminal acts related to marital rape specifically.

B. Law Number 1 of 2023 concerning the Criminal Code (KUHP)

As an application of *ius constituendum* or aspired law, Law No. 1 of 2023 on the Criminal Code (KUHP) brings various significant changes in Indonesian criminal law, including the handling of cases of domestic violence. The new Criminal

Code includes more detailed and clear provisions on sexual and physical domestic violence, ensuring that any act of violence can be prosecuted firmly and providing maximum protection for victims.

Digging further, the elements of *marital rape* have actually been contained in Article 473 of Law Number 1 of 2023 concerning the Criminal Code which states:

1. "Every person who by violence or threat of violence forces someone to have sexual intercourse with him, shall be punished for committing rape, with a maximum imprisonment of 12 (twelve) years".
2. Included in the crime of rape and punishable as referred to in paragraph (1) is "the act of having sexual intercourse with a person with his/her consent, because the person believes that the person is his/her legal husband/wife";

It is clear in the article that rape or sexual assault is based on the unlawful act of believing that the person is a legal spouse. However, the regulation will come into force in 2026 even though it was passed in 2023. This makes the provisions in the Article unable to be used as a reference. So as a rule that has a more specific position, the PKDRT Law must be defined completely and specifically to be able to accommodate the criminalization of perpetrators of *marital rape*. Meanwhile, when looking at the current Criminal Code, namely *Staatsblad* 1915 number 732, in general, the rules of sexual violence can be found in Article 285 of the Criminal Code which reads: "Whoever uses violence or threat of violence to force a woman to have sex outside of marriage, shall, being guilty of *rape*, be punished by a maximum imprisonment of twelve years" However, the article does not classify *marital rape*, so *marital rape* is not considered a criminal offense as stated in the law.

Overall, the various regulations related to domestic sexual violence described above show the serious commitment of the Indonesian government in dealing with sexual violence. However, there are several aspects that become obstacles, causing losses to parties who are in a vulnerable position, especially women. In terms of the time and place of violence against women. There are 4 main areas, namely: the family environment (*domestic violence*), in the community environment (*community violence*), and public places (*public violence*) and workplaces (job violence), then for the criteria of the perpetrators, only two are distinguished, namely: the closest person or stranger. In social life, women are the ones who tend to get a weak position so that the potential as victims in an act of violence, especially domestic violence is very large. Especially if the sexual violence is committed in a marital status, which is generally carried out in a private area and protected by the right to sexual needs of the husband against the wife or vice versa. Of course, if the rules related to sexual violence are not specifically defined, it will be a bad record in Indonesian law enforcement.

The definition contained in Article 1 paragraph (1) of Law Number 23/2004 on the Elimination of Domestic Violence confirms that domestic violence is "Any act against a person, especially women, which results in physical, sexual,

psychological suffering or suffering and/or domestic neglect, including threats of action, coercion or unlawful deprivation of freedom in the household". Then in Article 5 of the PKDRT Law states that every person is prohibited from committing domestic violence against people within the scope of their household, by means of:

- a. physical violence;
- b. psychological violence;
- c. sexual violence; or
- d. domestic neglect.

Based on these provisions, sexual violence is part of the methods included in the category of domestic violence. In relation to Article 8 letter a of Law Number 23 Year 2004 on the Elimination of Domestic Violence (UU- PKDRT) states "every person is prohibited from committing domestic violence against persons within the scope of their household. In relation to the contents of Article 5, the following are the elements:

- a. Every person
- b. Prohibited
- c. Committing domestic violence (sexual violence)
- d. Against people in their household environment The scope of the household referred to based on Article 2 of the PKDRT Law includes: "husband, wife and children and people who have a family relationship due to blood, marriage, breastfeeding, care, and guardianship, who live in the household and people who work to help the household and live in the household."

Looking at the elements in the Article, the subject criteria are quite clear, but incomplete, especially when compared to the elements of *marital rape* contained in the National Criminal Code as stated "against people in their domestic environment" this element clearly cannot be interpreted directly as one of the bases in imposing offenses for perpetrators of marital rape because the regulation does not specifically regulate sexual violence committed by husbands against wives or vice versa.

This means that as long as the concept of marital rape or rape in marital status is not defined in the applicable law, according to the principle of legality commonly known in Latin as "*nullum delictum nulla poena sine praevia lege*" which means there is no offense, no punishment without prior regulation. As long as it is not regulated, the offense cannot be applied literally. Quoting the definition or criteria of *marital rape* presented by Nurul Ilmi Idrus, *Marital Rape: "Sexual Violence in Marriage"*. (Nurul Ilmi Idrus 1999) There are also those who define that *marital rape* is an act of violence committed by a man or husband to a woman or wife to carry out sexual activity without considering the wife's condition. From the various definitions, it can be concluded that "*marital rape* is a form of sexual violence in the form of rape committed by a husband against his wife or vice versa either in the form of threats, forced intercourse with tastes that are not preferred by the wife or husband (victim),

for example, forcing the victim / wife to have anal sex (inserting the penis into the anus), or oral sex (inserting the penis in the mouth). Or threats of other sexual violence that can cause physical or psychological harm to the victim".

From the point of view of the theory of crime, *marital rape* has fulfilled several elements such as: the existence of an act and the existence of an element of guilt based on the elements of intent and threat, but the elements of unlawful and unlawful nature which are interpreted as the act must violate legal norms or be against the applicable law and the act must be threatened with punishment, meaning that it has been determined in the law that the perpetrator can be punished if he commits the act. Unspecific definitions can cause confusion and uncertainty in the application of the law, making it difficult for victims to get the justice they need. The non-specific elaboration of the elements of the articles in the rules related to sexual violence in marriage statute creates normative vagueness, where the law does not expressly regulate or cover all forms of sexual violence in marriage. This emphasizes the importance of reinterpreting and revising the law to ensure that all aspects of domestic sexual violence are clearly and unequivocally covered. Referring to the principles and terminology, the legal norm of *marital rape* can be said to have been accommodated if the elements of sexual violence (*rape*) committed in marital status whether committed by the husband or by the wife are explicitly stated in the Law and can be enforced at that time without the need for interpretation, so as long as these provisions are not fulfilled, the imposition of punishment on the perpetrators of *marital rape* is only based on subjective judgment which certainly creates legal uncertainty .

B. Evidence of Marital Rape Perpetrators in Article 8 of Law Number 23 Year 2004 on the Elimination of Domestic Violence.

It is commonplace that every sexual relationship between husband and wife becomes the privacy of both. So everything related to sexual intercourse is certainly carried out in private areas such as bedrooms and everything related to the activities of husband and wife relationships are in a private time and place. For some circumstances, one of the parties, both husband and wife, is unable to have sexual intercourse but is forced to have sexual intercourse. In general, the element of forced sexual intercourse is referred to as rape.

In marital relationships, the act of *rape* or forced sexual intercourse against a husband or wife is called *Marital Rape*. This action can be carried out in various forms and factors such as:

a. Battering rape

This form explains that the husband is the party who commits sexual violence and physical violence while forcing his wife to have sexual intercourse. This violence is often accompanied by beatings, kicking, or other forms of physical violence that

cause physical injury to the victim. The victimized wife not only suffers physical injuries but also deep psychological trauma. When a husband forces his wife to have sexual intercourse without consent, this is not only an invasion of privacy but also a serious violation of human rights. Many women or wives are physically and emotionally harmed by being forced by their husbands when they are not ready or willing to have sexual intercourse. This coercion can take many forms, from verbal and emotional pressure to threats of violence or the use of physical force. The trauma experienced by victims often continues long after the incident, causing long-term negative impacts on their mental and physical health.

b. Force only rape

This form describes a man or husband forcing or threatening a woman or wife before sexual intercourse. This coercion or threat is used to make a wife submit to her husband's wishes, creating a situation where the wife feels she has no choice but to comply. These threats can be threats of physical violence, emotional coercion, or even threats against their children, all aimed at controlling and intimidating the victim. When a husband has given up his

sexual desires to his wife, he may stop using physical violence. However, if the wife refuses or does not comply with his wishes, the husband may return to using physical violence as a form of punishment and control. This violence is not only physically damaging but also creates deep psychological scars. Victims often live in prolonged fear and stress, which can have a negative impact on their mental and emotional health. This kind of violence is often hidden from public view, as it takes place within the private space of the household. Victims may feel ashamed or afraid to report the violence due to social pressure or financial dependence on the perpetrator. In addition, the stigma attached to domestic violence often prevents victims from seeking help or support.

c. Obsessive rape

This form explains that *marital rape* is a sadistic form of violence such as beatings, hair pulling. Strangulation or even using sharp instruments to injure the wife in order to gain sexual gratification for her suffering. *Marital rape* in this form not only reflects extreme acts of physical violence but also shows deep psychological and emotional domination by the perpetrator over his victim. Such cases are often difficult to detect and prosecute because they occur within the private sphere of the household and victims may feel ashamed or afraid to report the violence. Weak law enforcement and legal uncertainty often leave victims feeling there is no way out of the situation they face.

Looking at the various forms and factors underlying *marital rape*, it is clear that the power relations held by husbands (men) and the physical strength that tends to be stronger have a very serious impact on victims. *Marital rape* is a form of domestic violence that not only physically but also psychologically injures the victim deeply.

Unequal power relations in marriage often leave victims feeling trapped and powerless to resist. The husband, with more dominant physical strength, can impose his will in a frightening and oppressive manner. When wives feel they have no control or choice, the impact can be extremely traumatic, eroding self-esteem and causing long-term trauma. According to criminal law, an act can be said to be unlawful if it contains at least the following elements:

a. The existence of a subject

The perpetrator and victim must be clear, where the perpetrator is the one who commits the act and the victim is the one who experiences the act. The perpetrator of *marital rape* is a husband who commits acts of coercive sexual intercourse against his wife. This is done without the wife's consent and is often accompanied by threats or physical violence. The perpetrator uses his physical strength or position of power in the marital relationship to force his wife to have sexual intercourse. In criminal law, the perpetrator must be clearly identifiable as the individual responsible for the act. Evidence such as witness statements, *Visum Et Repertum* (medical reports), and recorded communications can be used to identify and strengthen the case against the perpetrator.

b. The existence of an element of fault

The act must be committed with intent or at least legally culpable negligence. Intent is a key element in many criminal offenses, including *marital rape*. In this case, intent refers to the perpetrator's awareness and purpose to commit sexual violence against his wife. This means that the perpetrator intentionally forced sexual intercourse without the wife's consent, knowing that his actions were wrong and against the law. Intent can be proven through various means, such as the victim's testimony, the perpetrator's confession, or other evidence relevant to the case. Legally culpable negligence means that the perpetrator did not deliberately intend to commit sexual violence but still acted in a very negligent manner or ignored obvious risks such as ignoring gestures of refusal or the condition of the partner's body that did not allow sexual intercourse.

c. Unlawful conduct

The act must violate applicable legal norms. In the context of *marital rape*, the act must violate applicable legal norms. This means that acts of sexual violence committed by a husband against his wife must be legally recognized as violations and regulated in the applicable laws and regulations. Article 8 letter (a) of the PKDRT Law clearly states that sexual violence in the household. However, the regulation does not clearly outline *marital rape* as part of domestic violence. So that there is a need for legal interpretation so

that there is no certainty about *marital rape* as one of the norms or criminal offenses in Indonesia.

- d. An act prohibited or required by law.

The act must be clearly prohibited or required by the applicable law, which means that the perpetrator is liable to punishment for committing the act. In the context of *marital rape*, it is important that the act must be clearly prohibited or required by the applicable Law. This means that the law should expressly state that acts of marital sexual violence are illegal and that perpetrators are liable to punishment for committing such acts. This will give victims of *marital rape* the confidence to report the rape.

Just as with criminal offenses in general, an act of domestic violence must also fulfill these elements. Proof is one of the important processes to find out and show a fact in an event. The subject, the element of guilt, the existence of unlawful acts are parts that can be determined through the evidentiary process. In the context of *marital rape*, the elements of unlawfulness and intent are often challenging to prove in court. This is because many acts of *marital rape* occur in the private sphere, without witnesses, and often the victim is in a state of emotional and economic dependence on the perpetrator. This makes it difficult for the victim to report the act and obtain proper justice.

To achieve legal certainty the process of proof must be carried out by fulfilling the following components:

- a. Proof must be carried out in accordance with the method and with legal evidence according to the Law.
- b. The judge's conviction must also be based on legal means according to the law.

It is stated in the elements of the criminal offense and the evidentiary component that the evidentiary process must be based on the law. However, if it turns out that the law that is used as the basis for the offense to impose punishment on the perpetrator of *marital rape* has not been defined clearly, clearly and completely, especially in the phrase that "the act of *rape* is committed in marital status" makes proof as one of the difficult processes to find material truth in an event.

In criminal procedure law, tools are a reference in an evidentiary process as stated in Article 184 of the Criminal Procedure Code, namely:

- a. Witness testimony

Article 185 KUHAP paragraph 1 states that witness testimony as evidence is what the witness states in court and does not include information obtained from other people. Article 1 point 27 of the Criminal Procedure Code states that "witness testimony is one of the evidence in a criminal case in the form of information or knowledge experienced by the witness and explains the reasons for his knowledge". Attributed to the elements in *marital rape* which

tend to be carried out in the private sphere so that the victim witness must provide information about what he experienced.

b. Expert testimony

Article 186 of the Criminal Procedure Code states that "expert testimony is what a person states in a judicial hearing. Expert testimony is also provided at the time of examination by the investigator or public prosecutor in the form of a report".

c. Letter

Article 187 of the Criminal Procedure Code states that letters are one of the means of evidence, Article 187 explains that letter evidence can be divided into four types of letters, namely:

1. Minutes and other letters in official form made by authorized public officials or made in their presence, which contain information about events or circumstances that are heard, seen or in themselves, accompanied by reasons for the information.
2. A letter made pursuant to a statutory regulation or a letter made by an official concerning a matter included in the administration for which he is responsible and which is intended to prove a matter or circumstance.
3. A letter from an expert containing an opinion based on his expertise on a matter or situation formally requested from him.
4. Other letters that can only be valid if there is a connection with the contents of other evidentiary instruments.

Associated with *marital rape*, which is full of potential violence, letter evidence obtained through *Visum et Repertum* is a means of obtaining valid medical information. However, it is different from rape cases in general which can be known by examining the victim's genitals whether there is a forced tear or if it is done to a virgin whether the virgin membrane has been torn or not. Marital rape requires more detailed evidence (*Visum et Repertum*) because basically in a conjugal relationship, sexual intercourse is a legal thing.

d. Clues

According to Article 188 of the Criminal Procedure Code, clues are events or circumstances, which because of their correspondence, both between one another, and with the criminal act itself, indicate that a criminal act has occurred and who the perpetrator is, which is obtained through witness testimony, letters and testimony of the defendant.

e. Statement of the defendant

Article 189 of the Criminal Procedure Code explains that what is meant by evidence in the form of the defendant's statement is:

1. The statement of the defendant is what the defendant states in court about the actions he committed or what he knows or experiences

himself. The statement of the accused provides a direct view of the individual accused of a criminal offense. It is an opportunity for the accused to explain his or her actions, provide context, or deny the allegations made.

2. A defendant's statement given outside of court can be used to help discover evidence at trial, provided that it is supported by a valid piece of evidence insofar as it relates to the matter on which he or she is charged.
3. The defendant's statement can only be used against himself.
4. The statement of the defendant alone is not sufficient to prove that he is guilty of the act charged against him but must be accompanied by other evidence.

Apart from the evidentiary provisions specified in Article 184 of the Criminal Procedure Code, the following aspects can be used as a reference or consideration in parsing the proof of *marital rape* formulated in the study of formal and material crimes: First, formal crime is based on the rules of steps and processes that must be followed to categorize an act as a criminal offense. In the context of *marital rape*, formal criminal offenses require clear procedures in evidence collection, victim handling, and investigation by law enforcement. Steps that can be taken to obtain the formal truth are

- a. The victim or witness must report the incident to the authorities. This report should include details of the incident, including the time, place, and manner in which the sexual assault occurred.
- b. Then collect evidence such as Physical evidence such as *Visum et Repertum* (a medical report stating the presence of signs of physical or sexual violence) and tools used in the act of violence, and sound or video recordings if any.
- c. Statements from other witnesses who may have seen, heard or known about the *marital rape*. Because the victim's witness statement alone often results in a subjective assessment.

Second, material crimes are related to the substance of the crime itself, namely the elements that must be fulfilled to declare an act as a criminal offense. In the context of *marital rape*, material crime involves proving that the act has actually occurred and fulfills the elements of sexual violence such as the existence of an act, the elements of the subject (perpetrator) and object (victim), the element of guilt, and completed with the element against the law.

In line with the proof in the Criminal Procedure Code which applies generally, the proof of sexual violence in the household is also specifically regulated in the realm of domestic violence, the PKDRT Law regulates related proof as stated in Article 21 of the PKDRT Law, namely: emphasizing health care providers to provide services to victims such as: examining the health of victims according to professional

standards and making written reports on the results of examinations of victims and *Visum et Repertum* at the request of police investigators or medical certificates that have the same legal force as evidence. Based on the provisions of the article, it is clear that the use of a *Visum et Repertum* is evidence that has the power or strong evidence to reveal the existence of sexual violence against a person, as happened in decision No. 129/Pid.Sus/2022/P: 129/Pid.Sus/2022/PN Soe, the evidence of the *Visum et Repertum* of RSUD Soe Number:

RSUD.35.04.01/233./2022 dated September 28, 2022 made and signed by Dr. Raymond, SpOG. with the results of the examination of the witness Suryani Manu found that there was a reddish wound at nine, eleven, thirteen o'clock around the pubic lips there was no active bleeding, the wound was caused by blunt force. The existence of a post mortem is a strong consideration for the panel of judges to hand down a verdict to a husband who was charged with committing sexual violence against his wife.

The reason why in an act of domestic sexual violence, especially sexual violence in marital status, the strength of the *Visum et Repertum* is very strong because in other provisions related to proof in the PKDRT Law, namely Article 55 states "As one of the valid evidence, the testimony of a victim witness alone is sufficient to prove that the defendant is guilty, if accompanied by other valid evidence". So looking at the formulation of articles related to *marital rape* evidence which is very complex, it turns out that it only opens up a little space for the acquisition of evidence. The elaboration of specific articles is very necessary.

The series of evidentiary processes contained in the Criminal Procedure Code and the PKDRT Law to reveal facts in a *marital rape* incident is certainly not an easy thing, the lack of evidence coupled with the legal basis, namely the PKDRT Law, has not clearly outlined the elements of *marital rape* or sexual violence in *marital* status, making the series of evidentiary processes require more effort so that the truth obtained is not based on relative or subjective truth because it only involves perception and observation

CONCLUSION

Based on the analysis of the existence of marital rape as an offense in Indonesian criminal law, it is concluded that the criteria for legal subjects (victims) contained in the treatise of rules that apply as lex specialist, namely Law Number 23 of 2004 concerning the Elimination of Domestic Violence, are still incomplete. Marital Rape as part of Domestic Violence is mentioned in Article 8 letter

(a) of Law Number 23/2004 on the Elimination of Domestic Violence, namely "Every person is prohibited from committing domestic sexual violence against people within the scope of their household". The element that states "against a person within the scope of his/her household" clearly cannot be interpreted directly as one of the

reasons for imposing an offense for the perpetrator of marital rape, because the regulation regulates sexual violence committed by a husband against his wife or vice versa as stated in the National Criminal Code.

The power of *Visum et Repertum* has a very important role in proving cases of domestic sexual violence, especially in the context of *marital rape*, due to the limited other evidence. Article 55 of the PKDRT Law states that the victim's witness testimony supported by one other legal evidence is sufficient for proof. However, the process of proving marital rape cases is very complex and difficult due to the lack of evidence and the lack of clear description of the elements of sexual violence in marriage in the PKDRT Law. This causes the proof process to require more effort so that the truth obtained is not relative or subjective.

Suggestion.

Along with the enactment of Law No. 1 of 2023, which explicitly states the elements that make up the crime of *marital rape*, it is hoped that there will be an increase in clarity and legal certainty in handling cases of sexual violence in marriage. However, until this law is officially enacted, existing judicial decisions can serve as a guide in understanding the legal interpretations applied by the courts and provide precedents that can be used in similar cases. Proving *marital rape* requires a comprehensive approach that covers both the formal and material aspects of the crime. However, the need for interpretation or interpretation of the applicable norms makes proving *marital rape* as a criminal offense requires very strong legal considerations, because of the risk of legal clashes with the stigma and culture that develops in society.

The process of proof in *marital rape* cases requires extra effort due to the lack of evidence and the lack of a complete legal definition of sexual violence in marriage. The PKDRT Law needs to outline in more detail the elements of sexual violence in marital status to facilitate the evidentiary process and achieve material truth in this incident. Revise the PKDRT Law to increase legal certainty for victims of domestic violence, especially in cases of *marital rape*. Furthermore, victims of *marital rape* are often reluctant to report for fear of social stigma or threats from the perpetrator who may have significant control in the household. This exacerbates the situation, as the lack of reports and evidence makes law enforcement more difficult. The criminal justice system must have better and supportive mechanisms to deal with cases of domestic sexual violence fairly and effectively, therefore, comprehensive legal reforms are needed to ensure that all forms of sexual violence, including *marital rape*, can be properly prosecuted. Governments, communities and lawmakers must work together to clarify definitions, strengthen legal frameworks, and ensure that victims get the protection and justice they need. Educating the public about individual rights in marriage is also crucial to reducing the rate of sexual violence and ensuring that everyone can live in a safe and violence-free domestic environment.

REFERENCES

- Achmad, Mukti Fajar and Yulianto. 2022. *Dualisme Penelitian Hukum Normatif & Empiris*. Pustaka Pelajar
- Anjani, Salsabila, and Rajin Sitepu. 2023. "Analisis Pemerkosaan Dalam Rumah Tangga (Marital Rape): Sebab, Modus Operandi, Perlindungan Hukum Terhadap Korbannya Dan Upaya Mengatasinya." *Unes Law Review* 5(4). Doi: 10.31933/Unesrev.V5i4.
- Bahiej, Ahmad. 2006. "Sejarah Dan Problematika Hukum Pidana Materiel Di Indonesia." *Sosio-Religia* 5(2):1-21.
- Dermawan, Andy. 2004. "Marital Rape Dalam Perspektif Qur'an." *Psw Iain Sunan Kali Jaga*.
- Isima, Nurlaila. 2021. *Kebijakan Hukum Pidana Marital Rape dalam Konsep Pembaharuan Hukum Di Indonesia*. Vol. 1.
- Komnas, komnas. 2022. *Catatan Tahunan (Catabu) Tahun 2022*.
- Lumatul Aisyah, and Muhammad Anis Zayadi. 2022. "Kriminalisasi Marital Rape Perspektif Maqasid Al-Syari'ah." *Wasathiyah* 4(2):64-77. Doi: 10.58470/Wasathiyah.V4i2.33.
- Muhaimin. 2020. *Metode Penelitian Hukum*. Mataram: Mataram University Press.
- Nurul Ilmi Idrus. 1999. "Marital Rape: Kekerasan Seksual Dalam Perkawinan." *Pusat Penelitian UGM dan Ford Foundation*.
- Qadriah, Lailatul. 2023. "Disparitas Putusan Hakim Terkait Marital Rape." *Fakultas Syariah Dan Uin Syarif Hidayatullah Jakarta*.
- Kitab Undang-Undang Hukum Pidana
- Law No. 8 of 1981 on Criminal Procedure Law
- Undang-Undang Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana
- Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan dalam Rumah Tangga (LN.2004/No.95, TLN No.4419, LL SETNEG: 25 HLM)
- Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual (LN.2022/NO.120, TLN NO.6792, 58 hlm)
- Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.