



AN ANALYSIS OF THE ISLAMIC LEGAL MAXIM ADH-DHARARU YUZAL REGARDING MARITAL RAPE

ANALISIS TERHADAP KAIDAH HUKUM ISLAM ADH-DHARARU YUZAL TERKAIT PEMERKOSAAN DALAM PERKAWINAN

Muhammad Rizal Firdaus^{1*}, Syifa Fedira Az Zahra², Maieva Wulan Dari³, Budi Setyo Nugroho⁴, Zella Famelia⁵

^{1*}Walisongo State Islamic University, Email : rizalpgk465@gmail.com

²Walisongo State Islamic University, Email : fedirasyifa@gmail.com

³Walisongo State Islamic University, Email : 2202036073@student.walisongo.ac.id

⁴Walisongo State Islamic University, Email : budisetyo.nugrohoo@gmail.com

⁵Walisongo State Islamic University, Email : zellafamelia090701@gmail.com

*email koresponden: rizalpgk465@gmail.com

DOI: <https://doi.org/10.62567/micjo.v3i3.2501>

Abstract

This article examines the review of the adh-dhararu yuzal fiqh rule on *marital rape* (*marital rape*). This is a real threat to victims of *marital rape*, especially women. Unfortunately, the majority of the general public often views it as a wife's obligation to fulfill her husband's lust. This article aims to provide insight and in-depth understanding of *marital rapem* and invite the public to understand *marital rape* in the adh-dhararu yuzal review that it is contrary to Islamic law and the rules of fiqh. This article uses library research methods as well as a qualitative research approach and qualitative descriptive data collection through observations, documentation and descriptive analysis. The results of the study clarify the adh-dhararu yuzal fiqh rule which emphasizes that evil must be eliminated, provides a basis for respecting women's rights in marriage and responding to rape as a violation that must be stopped.

Keywords : Marriage, Rape, Adh-Dhararu Yuzal.

Abstrak

Artikel ini mengkaji pemerkosaan dalam perkawinan (*marital rape*) melalui tinjauan kaidah fikih *adh-dhararu yuzal* (bahaya harus dihilangkan). Fenomena ini merupakan ancaman nyata bagi korban pemerkosaan dalam perkawinan, khususnya perempuan. Sayangnya, sebagian besar masyarakat



umum sering kali memandangnya sebagai kewajiban istri untuk memenuhi hasrat seksual suaminya. Artikel ini bertujuan memberikan wawasan dan pemahaman mendalam mengenai pemerkosaan dalam perkawinan serta mengajak masyarakat untuk memahaminya melalui tinjauan kaidah *adh-dhararu yuzal*, yang menegaskan bahwa tindakan tersebut bertentangan dengan hukum Islam dan kaidah-kaidah fikih. Penelitian ini menggunakan metode studi pustaka dan pendekatan kualitatif, dengan pengumpulan data deskriptif-kualitatif melalui observasi, dokumentasi, dan analisis deskriptif. Hasil penelitian memperjelas penerapan kaidah fikih *adh-dhararu yuzal* yang menekankan perlunya menghilangkan kemudharatan sebagai landasan untuk menghormati hak-hak perempuan dalam perkawinan dan memandang pemerkosaan sebagai pelanggaran yang harus dihentikan.

Kata Kunci : Pernikahan, Pemerkosaan, *Adh-Dhararu Yuzal*.

1. INTRODUCTION

Sexual intercourse outside the bond of marriage is categorized as zina (adultery/fornication) under Islamic law, as it is strictly forbidden (haram). This is established in the Word of Allah SWT in Surah Al-Isra, verse 32:

وَلَا تَقْرَبُوا الزَّيْنَىٰ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

Meaning: "Do not come near to adultery. Indeed, it is a heinous act and the worst way."

In this verse, Allah SWT prohibits even approaching the act of zina (adultery), let alone committing it, as it is self-destructive and leads to an evil path. This verse reflects Allah's mercy toward His servants, seeking to protect them from such transgressions. Marriage, as a sacred bond between a man and a woman, serves as a safeguard to protect individuals from the temptations of adultery. It is an enduring union intended to establish a household characterized by sakinah (tranquility), mawaddah (love), and warahmah (mercy), aiming to attain the pleasure (ridha) of Allah SWT while simultaneously upholding the civil rights and obligations between husband and wife.

Marriage can be perceived as a social institution that functions to facilitate the legitimate fulfillment of individual sexual desires, while prioritizing socially recognized norms and obligations. Within this context, it is expected that a relationship founded on affection, love, and responsibility will be established, contributing to the formation of a harmonious, loving, and peaceful family.

Once the marital union is established, sexual intercourse is regarded as an act of worship (ibadah). In essence, both husband and wife possess equal rights regarding sexual intimacy. Sexual intercourse is generally intended to be mutually enjoyed by both parties, rather than being coerced by one partner. However, in reality, instances of sexual coercion by husbands toward their wives frequently occur. This is often perceived as a commonplace occurrence; indeed, a significant portion of society holds the view that 'a wife must comply with all of her husband's desires, whatever they may be, including sexual satisfaction in bed.

Marital rape is a form of coercion used to force sexual intercourse with a spouse. This phenomenon is frequently concealed within the privacy of marriage. In many cases, the victims of these acts are wives. These devious actions within a marital context reflect an attempt to fulfill biological needs through the use of coercion, threats, or even violence. This situation generally occurs when a husband possesses a high sexual drive while the wife is unable to meet those needs, leading the husband to feel entitled to engage in sexual intercourse without obtaining his wife's consent.

This controversy is often influenced by doctrinal interpretations of religious texts that place the wife in a subordinate position, requiring her to be obedient and serve her husband. A wife's disobedience is frequently categorized as nusyuz or an act of immorality. In this view, while rape is considered contrary to social norms, marriage is viewed as an institution that legitimizes all aspects of the husband-wife relationship, including sexual intimacy. Consequently, *marital rape* is often regarded as incompatible with the traditional understanding of the validity of marital relations.

Marital rape has become a controversial issue within Islamic family law, where marriage is frequently understood as aqd tamlik (an ownership contract) and aqd ibahah (the husband's right to



sexual access). In this perspective, the wife is often positioned as an object for the husband's sexual gratification. Should the wife refuse a sexual invitation, the husband is deemed to have the right to force the encounter, which can lead to physical violence, leaving the wife compelled to undergo sexual relations passively. Looking at the data on domestic violence cases published by the Ministry of Women Empowerment and Child Protection (Kemenpppa) in the following table:

Table 1 Report of Violence Cases Inputted by the Ministry of Women Empowerment and Child Protection (KemenPPPA) for the 2024 Period

Jumlah Kasus	Tempat Kejadian
19.369	Rumah Tangga
3.221	Fasilitas Umum
2.017	Sekolah
435	Tempat Kerja

Sumber Data: Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, 2024, Data Kasus Kekerasan 2024. Jakarta: Sistem Informasi Online Perlindungan Perempuan dan Anak (SIMFONI PPA)

As illustrated in the table above, violence frequently occurs within the domestic sphere. According to the data from the Ministry of Women Empowerment and Child Protection (KemenPPPA), sexual violence constitutes the highest number of reported cases, totaling 14,459 instances. Furthermore, regarding the relationship between the parties involved, spouses (husbands or wives) account for 4,764 of the perpetrators.

In the context of recent Indonesian positive law, the protection of sexual autonomy and the elimination of sexual coercion in the household have been further strengthened by the enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS). This regulation explicitly categorizes forced sexual intercourse within a marriage as a form of unlawful sexual violence. The TPKS Law reflects reforms in national law that align with the spirit of protecting human rights and preventing harm (dharar) in the domestic sphere.

Marital rape, which leads to both physical and non-physical violence, constitutes a form of harm (mudharat) that must be avoided or even eliminated. This is because it can cause the victim to suffer damage in both their physical and psychological well-being. This concept is coherent with the fundamental Islamic legal maxim: Adh-Dhararu Yuzal (Harm must be eliminated).

The Islamic legal maxim adh-dhararu yuzal asserts that harm (kemudharatan) must be eliminated. According to this principle, anything considered harmful to an individual must be avoided or addressed to protect oneself from damage. Within Islamic Sharia, all forms of harm are deemed forbidden (haram). It is unjustifiable for anyone to cause damage or harm either to themselves or to others, whether it concerns life, property, or honor. Consequently, it is mandatory to prevent the emergence of harm through preventive measures and to eliminate existing harm through repressive actions.

Marital rape constitutes a tangible threat to victims, particularly women. Unfortunately, the majority of the lay public perceives it merely as a wife's obligation to satisfy her husband's sexual desires. This perspective is substantiated by various aspects, most notably through doctrinal interpretations of religious texts that compel a wife to remain subordinate to her husband's will, even under duress or violence.

Consequently, the research problem formulated for this study involves an analysis of *marital rape* through the lens of the Islamic legal maxim Adh-Dhararu Yuzal. Based on these premises, the researcher is interested in examining this issue in a study titled: 'AN ANALYSIS OF THE ISLAMIC LEGAL MAXIM ADH-DHARARU YUZAL REGARDING MARITAL RAPE'.

2. RESEARCH METHOD

The author utilizes library research, which involves gathering information and data from various available sources such as reference books, previous studies, articles, notes, and relevant scientific



journals. This collection process is conducted systematically to analyze and conclude the data using appropriate methods, aiming to address the research problems. In this regard, the researcher intends to conduct an in-depth study by integrating empirical data namely the realities occurring within society with information gathered from various literary sources relevant to the analyzed research. This approach ensures that the in depth review identifies the issues effectively to provide solutions to the problems at hand.

The approach used in this study is a qualitative approach, defined as a research approach that is in-depth and holistic within a specific context of time and situation. Thus, this qualitative research is intended to find answers to the issue of *marital rape* through the lens of Islamic Law and the Islamic legal maxim Adh-Dhararu Yuzal.

3. RESULT AND DISCUSSION

Marriage According to Islamic Law and Positive Law

Linguistically, the term nikah refers to the meaning of 'gathering' or 'uniting.' Meanwhile, in Sharia terminology, the definition of nikah can be found in the explanation by Sheikh Zakariya Al-Ansari in the book Fathul Wahab, which outlines the following:

كتاب النكاح. هُوَ لُغَةً الضَّمُّ وَالْوُطْءُ وَشَرْعًا عَقْدٌ يَتَضَمَّنُ إِبَاحَةَ وَطْءٍ بِلَفْظِ إِنْكَاحٍ أَوْ نَحْوِهِ

Meaning: "The Book of Marriage (Kitab al-Nikah). Linguistically, nikah means "gathering" or "intercourse." In Sharia, it refers to a contract that embodies the permissibility of sexual intercourse using the word nikah or its equivalents."

In fiqh literature, the term 'marriage' originates from the Arabic word al-nikāḥ, which etymologically signifies al-wāṭi' (sexual intercourse), al-dammu wa al-tadākhul (merging or intermixing), and al-dammu wa al-jam'u (merging or uniting). In a broader sense, marriage also refers to al-wath (sexual intercourse) and al-'aqd (the contract), describing a formal relationship between a husband and wife in both physical and legal context.

According to Sayyid Sabiq, marriage is *Sunnatullah*, a natural law applied by God to all of His creations, including humans, animals, and plants. This illustrates that marriage is not merely a human social phenomenon but also part of the universal natural order prevailing across all living beings.

According to Abdurrahman Al-Jaziri, marriage is a sacred covenant between a man and a woman aimed at forming a *sakinah* (tranquil) family. This definition emphasizes that marriage is an agreement based on the free will of both parties, grounded in a voluntary mutual commitment. Thus, marriage is not merely a formal bond but also an embodiment of a mutual agreement driven by the sincere intention and willingness of each party to build a legitimate and sustainable relationship.

According to Abu Zahrah, the purpose of marriage is to legitimize sexual relations between a man and a woman, as well as to create mutual assistance in building family harmony. In this context, each party possesses rights and obligations that must be fulfilled in accordance with the provisions of Sharia law. Consequently, marriage functions not only as the legalities of a biological relationship but also as a social bond that demands reciprocal responsibility based on prevailing religious norms and laws.

The bond of marriage in Islam, solemnized through the *aqd al-nikah* (marriage contract), constitutes a strong and religiously valid agreement, known as *mithaqan ghalidhan* (a firm covenant), as translated in Surah An-Nisa verse 21:

وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَىٰ بَعْضُكُم إِلَىٰ بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا

Meaning: And how could you take it while you have gone in unto each other and they have taken from you a solemn covenant?"

"Based on the aforementioned statements regarding marriage from the perspective of Islamic Sharia, it can be concluded that once the marriage contract (*aqd al-nikah*) is solemnized, both husband and wife are obligated to fulfill their respective rights and duties in accordance with Sharia provisions.



Thus, marriage or nikah can be understood as a binding covenant between a man and a woman to form a family, conducted through procedures that align with the pleasure (ridha) of Allah.

According to Article 1 of Law No. 1 of 1974, marriage is a physical and spiritual bond between a man and a woman aimed at forming a harmonious family, based on the values of the One Almighty God.

Based on Article 1 of the Marriage Law, it can be inferred that marriage encompasses two dimensions: the physical (lahiriah) and the spiritual (batiniah). The article states that 'Marriage is a physical and spiritual bond between a man and a woman as husband and wife,' emphasizing that marriage is not merely a physical union but also includes an emotional and spiritual relationship between both parties.

Marriage is fundamentally established based on the voluntary consent of both parties. A marriage is considered invalid if it is conducted under coercion, whether from external parties or from one of the prospective spouses, as this contradicts the objective of Law No. 1 of 1974 concerning Marriage, which is to create a harmonious and enduring family. Prior to the marriage contract (aqd al-nikah), the marriage registrar (naib or penghulu) ensures the absence of coercion by verifying the sincere consent of both prospective spouses.

Presidential Instruction Number 1 of 1991 regarding the Dissemination of the Compilation of Islamic Law (KHI) defines marriage as mithaqan ghalidhan (a firm covenant), conducted as an act of obedience to Allah and as a form of worship. The purpose of marriage is to form a sakinah, mawaddah, and rahmah family one that is peaceful, tranquil, and filled with affection.

Definition of *Marital rape*

Etymologically, '*marital rape*' is derived from the English words 'marital' (relating to marriage) and 'rape.' Terminologically, *marital rape* refers to sexual intercourse within a marriage performed without consent whether through vaginal, oral, or anal means utilizing coercion, threats, or occurring when one party, particularly the wife, is unconscious or unable to provide consent. This definition emphasizes that *marital rape* involves a violation of an individual's sexual autonomy, despite being within a legal marriage bond.

According to Elli N. Hasbianto, *marital rape* is sexual intercourse conducted through coercion without considering the wife's desires, emphasizing sexual dominance by the husband over the wife's sexual autonomy. Meanwhile, Farkha Cicik categorizes *marital rape* into three types: (1) sexual intercourse performed with coercion when the wife is not physically or emotionally ready, (2) sexual intercourse accompanied by violence, and (3) coercion that meets with resistance from the wife. Both definitions highlight the violation of individual sexual autonomy within the marital bond and recognize the dimension of violence within such relationships.

Based on the definition of *marital rape*, its various forms include, among others:

1. Unwanted sexual intercourse with the wife due to her physical or psychological unreadiness.
2. Sexual intercourse performed in a manner unwanted by the wife, such as through oral, anal, or other unjustifiable methods, which may sometimes be associated with certain customs or traditions."

In many legal systems, women are often positioned as having half the value of men, reflecting discriminatory legal behavior. From an Islamic perspective, such misogynistic perspectives and practices are replaced by an approach that is more just and emphasizes equality. Islam has, step by step, restored the autonomy of women as independent individuals by recognizing their rights in a more egalitarian manner. However, despite these changes, social and cultural realities still exhibit significant disparities in the relationship between women and men. Women frequently remain positioned as subordinates, marginalized, and discriminated against, both in domestic and public spheres. This discrimination is reflected in traditional roles that continue to restrict women's active participation in various aspects of life.

Feminist thinkers argue that the marginalized position of women is driven by patriarchal ideologies and cultures that prioritize male interests, which are often justified through religious



interpretations. A clear example of this is the way some religious scholars interpret Quranic verses in a manner that tends to reinforce the structure of gender inequality. One such instance is the interpretation of Surah An-Nisa Verse 4, which reads:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالصَّالِحَاتُ قَانِتَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْتَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا

Meaning: 'Men are the protectors and maintainers of women because Allah has given the one more [strength] than the other, and because they support them from their means. The refore the righteous women are devoutly obedient, and guard in [the husband's] absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct (nusyuz), admonish them [first], [next], refuse to share their beds, and [last] strike them [lightly]; but if they return to obedience, seek not against them means [of annoyance]: For Allah is Most High, great [above you all].

Commentators generally interpret the word qawwām in the Qur'an as leaders, guardians, or educators. This interpretation, provided it is not discriminatory, does not pose a significant issue. However, some interpretations view male superiority over women as absolute, citing that men are created with superior intellectual and physical capacities. This perspective often reinforces gender inequality within social structures.

As times change and women increasingly demonstrate the ability to perform roles previously considered male-dominated, arguments for superiority based on intellectual and physical differences become irrelevant. The evolution of society from traditional to modern indicates that gender roles and social structures are dynamic and continuously evolving.

Causes of Marital rape

The causes and factors contributing to the occurrence of *marital rape* can be explained as follows:

a. Patriarchal Culture

Patriarchy, as a social system, positions men in a dominant role compared to women, thereby granting them control over women in various aspects of life. This patriarchal culture is widespread across nearly all layers of society, including tribal, customary, and even religious structures, which continue to reinforce norms supporting male dominance. In the context of marriage, the husband is perceived to hold dominant power over the wife. Consequently, when violence occurs, it is often justified by the argument that the husband, as the head of the family, must be respected and honored, thus sustaining the continuation of such dominant practices within society.

b. Lack of Comprehensive Interpretation of Religious Teachings

Islam views marriage as a firm covenant (mithaqan ghalidhan) that necessitates mutual responsibility between husband and wife to create a sakinah family, based on love (mawaddah) and compassion (rahmah). The status of husband and wife is equal, with equivalent responsibilities to achieve family harmony. However, partial interpretations of religious texts can lead to misunderstandings, such as the justification of *marital rape* which contradicts Islamic principles that emphasize equality and the prohibition of domestic violence.

c. Imbalanced Power Relations within the Household

Dominance and imbalanced power relations between men and women are often legitimized by social, religious, legal, and state institutions, which are passed down through generations and accepted accommodatively by society. Within the family, where men function as breadwinners and women as passive recipients, women's mobility is often restricted. When domestic violence occurs, women find it difficult to obtain protection or report the violence due to economic dependence and the power inequality inherent in the relationship.

The following are factors that give rise to sexual violence by husbands against wives, including:

- a. Domestic sexual violence frequently occurs within closed, private spaces, making it difficult to detect or intervene in; consequently, such incidents are rarely disclosed to the public.



- b. Domestic sexual violence is still considered acceptable by some parties, primarily due to the assumption that sexual relations are a wife's obligation and a husband's right, as well as the understanding that a husband, as the head of the household, has the right to treat his wife according to his will.
- c. Domestic sexual violence occurs within the framework of a legally valid marriage, which further adds to the complexity of its handling.
- d. Cases of domestic sexual violence are seldom resolved through judicial channels due to concerns over exposing family disgrace (aib), social stigma, and the fear of legal consequences that could be detrimental to both parties.

Understanding the Principles of Fiqh Adh-Dhararu Yuzal

Etymologically, al-Dharar (harm) is the antonym of al-Naf'u (benefit), referring to all forms of loss or hardship. Terminologically, al-Dharar signifies any form of damage that affects an object or a state of being. In Islamic Sharia, harm is considered haram (prohibited), and individuals are forbidden from causing damage to life, property, or honor whether toward themselves or others. Islam emphasizes preventive measures to avoid harm and prioritizes efforts to eliminate existing damage as part of the principle of protecting the public interest (maslahah).

This legal maxim is of paramount importance as it aligns with one of the fundamental principles of Islamic Sharia revealed by Allah SWT through the Prophet Muhammad SAW, namely 'lā ḥaraj' (the absence of hardship). This principle is reflected in various aspects of Islamic law aimed at providing ease and ensuring that the Ummah is not overburdened. One of the primary foundations of this principle can be found in the word of Allah SWT in Surah al-Hajj verse 78:

وَجَاهِدُوا فِي اللَّهِ حَقَّ جِهَادِهِ هُوَ اجْتَبَاكُمْ وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ ۚ

Meaning: 'And strive for Allah with the striving due to Him. He has chosen you and has not placed upon you in the religion any difficulty.'

The legal maxim al-Dhararu Yuzal (harm must be eliminated) possesses an extensive scope within Islamic law, leading some scholars to argue that it encompasses half of the knowledge of jurisprudence (fiqh). This is due to the fundamental principle of fiqh, which is generally divided into two primary objectives: 'Jalb al-Mashalih wa Dafa' al-Mafasid' (securing benefits and averting harms).

Imam al-Suyuthi (911 H) illustrated the paramount significance of the al-Dhararu Yuzal maxim by stating, 'Know that there are a vast number of legal rulings in fiqh that emerge and are applied based on the maxim of al-Dhararu Yuzal'.

An Analysis Of The Islamic Legal Maxim Adh-Dhararu Yuzal Regarding *Marital rape*

The legal maxim adh-dhararu yuzalu (harm must be eliminated) is a fundamental principle in Islamic law that emphasizes the protection of individuals from all forms of harm or danger. In the context of *marital rape*, this maxim can be applied to analyze the act of forced sexual intercourse by a husband against his wife. Such actions not only violate human rights but also contradict Islamic principles that prioritize the protection of the dignity and honor of every individual, including within the husband-wife relationship.

Marital rape is the forced sexual intercourse by a husband against his wife without her consent, whether physically or emotionally. This phenomenon often occurs within the context of social and cultural norms that assume a wife is obligated to fulfill her husband's sexual needs, without considering her desires or health conditions. In some societies, including certain circles within the Muslim community, there is a misconception that marriage grants a husband an absolute right to demand sexual relations at any time, thereby disregarding the principles of equality and respect for individual rights in Islam.

The legal maxim adh-dhararu yuzalu emphasizes the elimination of every form of harm (dharar). In cases of *marital rape*, the forced sexual intercourse by a husband constitutes a form of physical, emotional, and psychological harm for the wife. The application of this maxim serves as a basis for rejecting the practice of *marital rape*, asserting that a husband's act of forcing intimacy without consent is a violation that must be stopped.



In Islamic law, marriage should be established on the foundations of compassion and mutual understanding. The Qur'an, in Surah Ar-Rum (30:21), states:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

Meaning: 'And of His signs is that He created for you from yourselves mates that you may find tranquility in them; and He placed between you affection and mercy. In deed in that are signs for a people who give thought.'

The verse emphasizes that Allah SWT created partners to love one another and find tranquility. Forced sexual intercourse by a husband violates this fundamental principle and has the potential to cause significant harm (*dharar*) to the wife.

Although classical scholars tended not to discuss domestic sexual violence, modern thought demonstrates an increasing awareness of the importance of protecting women's rights. Several contemporary scholars now assert that *marital rape* is a serious violation of human rights that requires legal action. In this context, the application of the maxim *adh-dhararu yuzalu* can serve as a foundation for seeking justice for victims.

To ensure that the application of the maxim *Adh-Dhararu Yuzal* (*harm must be eliminated*) goes beyond a mere moral appeal and acquires binding legal force, Islamic law provides a repressive framework through the mechanism of *Ta'zīr* Sanctions.

1. Classification as *Jarimah Ta'zīr*

In Islamic criminal jurisprudence (*fiqh jinayah*), non-consensual sexual act and physical or psychological abuse by a husband are not categorized under *hudūd* or *qishāsh* offenses, but rather fall under *jarimah ta'zīr*. *Ta'zīr* refers to discretionary punitive measures where the type and severity of punishment are left to the authority of the judge (*qādhī*) or state authorities (*ulī al-amr*).

2. Forms of Repressive *Ta'zir* Sanctions

Judges hold the judicial authority to impose repressive sanctions on husbands who commit sexual violence in order to eliminate harm (*dharar*) and establish a deterrent effect (*zajr*):

- Imprisonment (*Al-Habs / Al-Sijn*): Deprivation of physical liberty to protect the wife's safety and psychological well-being from recurrent threats.
- Financial Penalties and Compensation (*Al-Gharāmah & Dhāmān*): Mandatory fines or financial restitution (*dhāmān*) for any physical harm or psychological trauma caused.
- Corporal Punishment (*Al-Jald*): Measured, corrective lashes administered within the strict limits of Islamic jurisprudence without endangering life.
- Restriction of Domestic/Social Rights: Legal measures such as temporary separation (*al-hajr*) or restrictions on certain privileges until the perpetrator demonstrates genuine repentance and reform.

3. Repressive-Judicial Application of the Legal Maxim

The principle of *Adh-Dhararu Yuzal* mandates active, repressive intervention to halt ongoing or past violations. By translating this religious principle into state-codified *ta'zir* sanctions, marital sexual violence is no longer treated as a private matter to be overlooked, but as a punishable criminal offense necessary to safeguard the wife's honor (*hifzh al-'irdh*) and life (*hifzh al-nafs*).

The legal maxim *adh-dhararu yuzalu* provides a robust basis for addressing the issue of *marital rape*. Guided by the principle that every form of harm must be eliminated, this maxim encourages society to better respect women's rights within the marital relationship. *Marital rape* is not merely a moral issue but also a legal matter that must be addressed seriously to create healthy and harmonious families. The application of this maxim is expected to transform societal perspectives on sexual violence and enhance protection for victims.

4. CONCLUSION

Marriage, from both Islamic and positive law perspectives, is a bond that carries spiritual and social significance, aimed at establishing a harmonious and happy family. In Islam, marriage is regarded as *mitsaqan ghalidzan* (a firm covenant) that requires both parties, husband and wife, to fulfill their rights and obligations within a framework of compassion



and mutual responsibility. Meanwhile, in Indonesian positive law, marriage is also defined as a physical and spiritual bond intended to create a family characterized by *sakinah* (tranquility), *mawaddah* (love), and *rahmah* (mercy).

The phenomenon of *marital rape* indicates an imbalance in power relations and a misconception regarding sexual rights within marriage. *Marital rape* occurs when one party, particularly the wife, is forced into sexual intercourse without consent—an act that is frequently normalized within patriarchal societies. This highlights issues in religious and cultural understandings that support male dominance within domestic relationships.

The legal maxim *ad-dhararu yuzalu* (harm must be eliminated) provides a robust foundation for addressing the issue of *marital rape* by emphasizing the importance of protecting women's rights and dignity, as well as eliminating all forms of harm. Islam teaches the preservation of the community's well-being and the avoidance of causing harm to anyone, including within the husband-wife relationship. As a universal principle, this maxim asserts that harm whether physical or psychological must be avoided and abolished, aligning with the protection of women's rights in marriage.

5. REFERENCES

- 'Aisyah, Siti, *Marital rape Dalam KUHP Dan Hukum Pidana Islam* (Fakultas Syari'ah IAIN Sunan Kalijaga Yogyakarta, 2001)
- Aisussariroh, 'Pemeriksaan Dalam Rumah Tangga (*Marital rape*) Dalam Pasal 8 UU No 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga Perspektif Kompilasi Hukum Islam Dan UU No 39 Tahun 1999 Tentang Hak Asasi Manusia' (Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember, 2023) <<http://digilib.uinkhas.ac.id/23801/1/SKRIPSI>>
- Al-Anshari, Syekh Zakaria, 'Fathul Wahab' (Beirut: Darul Fiqr, 1994)
- Al-Bukhari, as-Shahih, V: 2197, *Hadis Nomor 5055, "Bab Al Libas"*. Lihat Juga *Al-Asqalani, Fath Al-Bari Fi Syarh Shahih Al-Bukhari* (Beirut: dar al-Fikr)
- al-Manzhur, Ibnu, *Lisan Al-Arab*, 4th edn (Beirut: Dar Shaadiri)
- Al-Zuhaili, Wahbah, *Al-Fiqh Al-Islami Wa Adillatuhu* (Damaskus: Dār al-Fikr, 1989)
- Assiddiqi, Muhammad Hasbi, *Etika Hubungan Seksual Pasutri Dalam Q.S Al-Baqarah Ayat 223 (Analisis Metodologi Fatwa KUPI), Skripsi UIN Jember, 2023, CCXXIII*
- Ayu, Diyan Putri, 'Tinjauan Maqashid Syari'ah Terhadap Akibat Tindakan *Marital rape* Dalam UU No.23 Th. 2014 Dan RUKHP', *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, 1.2 (2019), 229–56 <<https://doi.org/10.37680/almanhaj.v1i2.172>>
- Bariel, Songi Saxnana, *QA'IDAH AD-DARARU YUZALU WA TATHBIQATUHA FI QHADAYAA AL-MU'AMALAH AL-MU'ASHIRAH*, *Fakultas Dirasat Islamiah* (UNIVERSITAS ISLAM NEGERI HIDAYATULLAH JAKARTA, 2023), XXXIII
- Basri, Rusdaya, *Fikih Munakahat 2, Ar-Risalah: Media Keislaman, Pendidikan Dan Hukum Islam*, 2020, XVII
- Departemen Agama RI, 'Intruksi Presiden Nomor 1 Tahun 1991 Tentang Kompilasi Hukum Islam', 2000, pp. 1–153
- DJALAL, M A, 'PEREMPUAN DAN ANAK DALAM NIKAH SIRRI (Telaah Perundang-Undangan Perkawinan Di Indonesia)', *Repository.Iain-Ternate.Ac.Id*, 2014, 11 <[https://repository.iain-ternate.ac.id/id/eprint/301/%0Ahttps://repository.iain-ternate.ac.id/id/eprint/301/1/PEREMPUAN DAN ANAK DALAM NIKAH SIRRI %28Telaah Perundang-Undangan Perkawinan di Indonesia%29 .pdf](https://repository.iain-ternate.ac.id/id/eprint/301/%0Ahttps://repository.iain-ternate.ac.id/id/eprint/301/1/PEREMPUAN%20DAN%20ANAK%20DALAM%20NIKAH%20SIRRI%20Telaah%20Perundang-Undangan%20Perkawinan%20di%20Indonesia%29.pdf)>
- Hasbianto, Elli N, 'Potret Muram Kehidupan Perempuan Dalam Perkawinan', in *Makalah Seminar Nasional: Perlindungan Perempuan Dari Pelecehan Dan Kekerasan Seksual, Diselenggarakan PPK UGM Bekerjasama Dengan Ford Foundation* (Yogyakarta tanggal 6 November 1996)
- Indonesia, Republik, 'Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan', *Peraturan*



- Pemerintah Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan*, 1974, 2
<<https://peraturan.bpk.go.id/Home/Details/47406/uu-no-1-tahun-1974>>
- Irham, Muh., Hartini Tahir, and Istiqamah, 'Tinjauan Hukum Islam Tentang *Marital rape* Dalam Rumah Tangga Terkait Rancangan Undang-Undang Hukum Pidana', *Qadauna: Jurnal Ilmiah Mahasiswa Hukum Keluarga Islam*, 3.1 (2021), 131–45 <<https://journal3.uin-alauddin.ac.id/index.php/qadauna/article/view/24335>>
- Jauhari, Wildan, *Kaidah Fikih Adh-Dhararu Yuzal*, ed. by Fatih (Rumah Fiqih Publishing, 2018)
- Kholik, Abdul, 'Konsep Keluarga Sakinah, Mawaddah Dan Rahmah Dalam Perspektif Hukum Islam', *Masile: Jurnal Studi Ilmu Keislaman*, 1.1 (2019), 108–26
<<https://jurnal.staima.ac.id/index.php/masile/article/view/11/9>>
- Lumatul Aisyah, and Muhammad Anis Zayadi, 'Kriminalisasi *Marital rape* Perspektif Maqasid Al-Syari', *Wasathiyyah*, 4.2 (2022), 64–77
<<https://doi.org/10.58470/wasathiyyah.v4i2.33>>
- Maysara, A, 'KEKERASAN SEKSUAL YANG DILAKUKAN SUAMI TERHADAP ISTERI (Studi Komparatif Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan ...)', *Warta Dharmawangsa*, 57 (2018), 1829–7463
<<http://jurnal.dharmawangsa.ac.id/index.php/juwarta/article/view/139%0Ahttps://jurnal.dharmawangsa.ac.id/index.php/juwarta/article/viewFile/139/134>>
- Munawar, Akhmad, 'Sahnya Perkawinan Menurut Hukum Positif Yang Berlaku Di Indonesia', *Al-Adl: Jurnal Hukum*, 7.13 (2015), 21–31 <<https://doi.org/10.31602/al-adl.v7i13.208>>
- Munir, Akmal Abdul, 'Pemikiran Sayyid Sabiq Mengenai Hikmat Al-Tasyri' Hukum Perkawinan Dalam Kitab Fiqh Al-Sunnah', *Hukum Islam*, 21.2 (2022), 320
<<https://doi.org/10.24014/jhi.v21i2.16524>>
- Pane, Ismail, M. Ridho Ramadhani, Tutut Sartika Siregar, Akmal Abdul Munir, and Aslati, 'Penerapan Kaidah Fiqhiyyah Al-Dhararu Yuzal', 1.1 (2024), 1–13
- Rizki, Fitria Noviatu, and Zainal Arifin, 'Pemeriksaan Dalam Rumah Tangga (*Marital rape*) Perspektif Hukum Di Indonesia, Timur Tengah, Dan Fiqih', *Bidayah: Studi Ilmu-Ilmu Keislaman*, 14.2 (2023), 239–57
<<https://ejournal.staindirundeng.ac.id/index.php/bidayah/article/download/2210/822>>
- Rohmah, Dhea Siti Nur, and Khoirul Anwar, 'Problematisasi Kekerasan Seksual Dalam Rumah Tangga (*Marital rape*) Perspektif Undang-Undang Berbasis Maqasid Al-Shariah', *Jurnal Pendidikan Tambusai*, 7.2 (2023), 18828–40 <<https://doi.org/10.31004/jptam.v7i2.9370>>
- Syofiyullah, Moh Aqil, Dyah Ochtorina Susanti, and Fendy Setiawan, 'Kepastian Hukum Bagi Istri Dan Anak Dalam Perkawinan Tidak Tercatat Di Indonesia', *HUKMY: Jurnal Hukum*, 3.1 (2023), 263–84 <<https://doi.org/10.35316/hukmy.2023.v3i1.263-284>>
- Yunus, Muhammad, '*Marital rape* (Perkosaan Dalam Perkawinan) Ditinjau Dari Perspektif Hukum Islam Dan Hukum Positif Indonesia (Studi Putusan Pengadilan Negeri Bangil No. 912/Pid/B/2011/PN.Bgl)', 912, 2018, 1–109
- Zahara, Sheila Fakhria dan Rifqi Awati, 'Membaca *Marital rape* Dalam Hukum Keluarga Islam Dan Rancangan Undang-Undang Penghapusan Kekerasan Seksual (P-KS)', *Jurnal Ijtihad*, 37.2 (2021), 12