

FULFILLMENT OF WIVES' OBLIGATIONS TO HUSBANDS IN SEXUAL RELATIONS IN INDONESIAN LEGAL ARRANGEMENTS

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Abstract

Sexual relations are often identified as the fulfillment of the wife's obligations towards her husband. Today, sexual relations that should be an element of harmony in the household actually cause havoc due to coercion from one of the parties, which is often interpreted as an event of marital rape. Marital rape is seen as a common thing, because it is merely a form of fulfilling the wife's obligations to her husband even in unfavorable situations and conditions. This perspective is considered patriarchal because it favors men over women, so a critical study of the existing reality is needed. This study aims to analyze and straighten the public's perspective on this thought, through a critical theory et al. al. This study uses the philosophy of law research method through a paradigmatic study approach by examining theories, concepts, principles, and specific questions of critical theory et.al. paradigm. The results of the study prove that marital rape is a virtual reality that is wrong and wrong, not only about fulfilling obligations, but also inner needs that are carried out voluntarily and without coercion. So that there is a need for socialization and reconstruction of public thinking about the existing virtual reality.

Keywords: Marital Rape, Sexual Relations, Paradigm.


1. INTRODUCTION

The phenomenon of sexual violence seems to be an irony that has no origin, every time it continues to grow and the forms of action are increasingly varied. Today, sexual violence does not only happen to strangers, it can even be experienced by the closest people. This phenomenon often occurs in various places and can be felt by anyone such as students at school, students on campus, office employees, to wives in the family environment (Noviana, 2015). In the last few decades, violence in family relationships is a phenomenon that is taken seriously and has attracted the attention of the wider community (Wahyuni & Sartika, 2020). It is an irony when it is known that the family, which should be a shelter, has become a chasm for one of them.

One form of violence in family relationships is identified with Domestic Violence (KDRT) between a husband and his wife. Domestic violence can place a husband or wife as a victim or perpetrator depending on how the condition is, in this case who is the party who commits violence in the relationship means that he is the one who commits domestic violence. However, based on the existing reality, the victim of domestic violence is more dominated by the wife because her position is considered weaker and must always obey her husband (Suzanalisa & Ismail, 2017). Some of the acts of domestic violence that are very common in society are usually in the form of abusive words, persecution, to coercion in sexual relations (Alimi & Nurwati, 2021).

Sexual relations are things that are commonly done by husbands and who have tied the knot, this is often considered an obligation and need that must be fulfilled and carried out by both parties. A good sexual relationship actually prioritizes volunteerism and sincerity (Alimi & Nurwati, 2021). However, it is possible that the stigma of fulfilling these obligations is actually the reason for not being able to refuse the invitation to have sexual relations, even though there is coercion between one party, at this stage there is a coercion between the husband and his wife. The reality proves that there is often coercion by husbands against their wives in having sexual relations. This is classified as marital rape, which is an act of sexual intercourse carried out forcibly by one party, especially the wife (Rasyidin, 2021).

The occurrence of marital rape is based on the perspective that a wife is obliged to fulfill her husband's sexual needs in any condition (Sari & Sularto, 2019). This perspective holds fast to the concept of patriarchy, because the wife is required to always obey her husband's request (Siburian,



2020). Whereas in this case, there are times when the wife has the right to refuse due to unsupportive conditions, such as fatigue, illness, menstruation, and even other things. For this reason, sexual relations which are considered as fulfilling the needs of partners often become opportunities for widespread acts of sexual violence. So that without realizing it, we are currently living side by side with wrong treatment but it is considered natural and right in the reality of society.

On the action of marital rape, various perspectives have arisen from the community, some people think it is normal and some people don't. So, in this case, the author tries to see from the perspective of legal philosophy through an in-depth study of the paradigm. Given that a person's perspective basically doesn't have the equivalent of a paradigm (Indarti, 2010). Thus, the presence of the critical theory paradigm et.al. has the essence to express criticism and transform the gender structure of this perspective (Indarti, 2010).

In this case, a similar study has been published through an article entitled "Sexual Violence Against Wives from the Point of View of the Criminal Law" by the author Samson Ruben, where the analysis is carried out through a case study using a criminal law perspective. Then as for the article entitled "The Conception of Marital Rape in the Fiqh of Munakahat" by the author M. Irfan Syaifuddin which explains marital rape from an Islamic perspective through a study of fiqh with the guidelines of the Koran.

Against the background of the problems described above, it is necessary to observe the dynamics of the fulfillment of the wife's obligations to her husband which often coexists with forced sexual intercourse or what is known as the concept of marital rape. Moreover, it will look interesting if the concept is studied through a study of legal philosophy with the critical theory et al paradigm approach al. as a means of academics to criticize a problem and is one element of the renewal of this research. So, the author tries to formulate 2 (two) problems as the focus of discussion in this paper. (1) What is the reality of fulfilling the wife's obligations to her husband in sexual relations? (2) How to study the philosophy of law in the critical theory paradigm et. al. explains the relationship between sexual relations with the wife's obligations to her husband? The discussion of these problems will be described in an article with the title "Fulfillment of Wives' Obligations to Husbands in Sexual Relations: A Study of Legal Philosophy through the Critical Theory Paradigm Et. Al."

2. RESEARCH METHOD

The research method applied in this research is philosophy of law research through a paradigmatic study approach by examining theories, concepts, principles, and questions, especially in the critical theory et.al paradigm. The data used are qualitative and quantitative (secondary) data, which are interpreted through legal materials from various literatures such as books, journals, papers, and previous research through document and literature studies. Then, these materials were analyzed using critical theory et al.'s typical analytical technique, namely by examining the transactional/subjectivist epistemology in this entire paper, and then drawing conclusions by reducing the data that has been presented in the description and the results of existing research.

3. FINDINGS AND DISCUSSION

3.1. The Reality of Fulfilling the Duties of the Wife to the Husband in Sexual Relations

Obedience, obeying, and fulfilling the husband's request is part of a wife's obligation. However, in reality, this view is misinterpreted by most Indonesian people (Ramadhanti, 2019). Society considers that serving her husband in sexual intercourse is an obligation that a wife should not refuse under any circumstances (Maula & Ariyanti, 2021). This causes the emergence of power over the husband to force his wife to have sexual relations or known as marital rape (Setiyawan & Mahmud, 2018).



Table 1. Types of Sexual Violence against Women (2021)

No.	Action Type	The Number of Cases That Happened
1	Rape	597 Cases
2	Marital Rape	591 Cases
3	Incest	433 Cases
4	Sexual harassment	374 Cases
5	Intercourse	164 Cases
6	Cyber Realm	108 Cases
7	Obscenity	63 Cases
8	Sexual Slavery	17 Cases
9	Sexual Exploitation	14 Cases
10	Attempted Rape	2 Cases

Source: Komnas Perempuan, 7 March 2022

Based on data obtained from the Women's National Commission (Komnas Perempuan), in 2021 marital rape occupies the second highest position against data on sexual violence that occurs in women (Dihni, 2022). This factor is influenced by the existence of a patriarchal culture which views that in marriage, the wife must always obey her husband's requests both physically and mentally (Sari & Sularto, 2019). The husband is considered to have the authority to force sexual intercourse with his legal wife under any circumstances, because there are common interests and a contract that has been bound since the husband married her. Meanwhile, the wife is considered to have given herself completely to her husband without being contested.

Thus, this perspective creates inequality in the marriage bond, which has positioned the wife as lower than the husband (Khatimah, 2013;). Marina Amiruddin as Deputy Chairperson of Komnas Perempuan, said that the public's misunderstanding of the concept of marital rape was caused by the influence of culture and marriage law in Indonesia (Darlan, 2021). The husband is placed as the breadwinner and the wife is a figure who must be ready to serve her husband, including in sexual relations. So that the case of marital rape is considered a virtual reality, which is realized wrongly. Marital Rape, including gender bias (Sari & Sularto, 2019). This is because the behavior shown by the husband in raping his wife was born because of the masculine characteristics of a man where the husband feels that his actions are a way to show his identity as a man (Asmarany, 2007). Supposedly, the husband does not need to take this action because sexual intercourse is actually carried out with the consent of both parties, without coercion, threats, or violence. Sexual intercourse is one of the inner human needs and the basis of a marriage bond which is a means of obtaining offspring, sexual pleasure, and sexual satisfaction (Rahmasari, 2022).

The reality of marital rape is becoming more evident with the case that occurred in 2021, namely Mansyardin Malik (Perpetrator) against his wife Marlina Oktaria (Victim). Based on the facts, the perpetrators often force the victim to have sexual intercourse while menstruating. In addition, the victim also suffered physical and psychological injuries as a result of marital rape by the perpetrator (Hanif, 2021). So that sexual relations that should be a primary need, it becomes a disaster for the wife. Because in this case it is no longer about the obligations of a wife to her husband, but the form and effort to respect and respect each other. Ironically, even wives who refuse to have sex for reasons of menstruation and childbirth are rejected by husbands who only follow their dark desires (Jamaa, 2013). The husband considers his wife to still have to serve him in any condition even though this is against the norm and interferes with his wife's own health (Ramadhan, 2021).

Feminists are of the view that marital rape cases often occur in households because of personal and private relations, which is considered when there is a formal bond and is legalized by the state, husband or wife can do anything. Moreover, this view has been legitimized by religion where when a wife does not want to serve her husband, she is a sinner. However, this understanding has been misunderstood by the public. There are several factors that cause marital rape in the marriage



bond, namely: The perpetrator has a high level of sexuality and cannot control it, the perpetrator has power over the victim, and the victim is powerless and has no power over rejection. Although Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) has regulated marital rape, the fact is that marital rape continues to occur in marriage bonds because some people think that sexual problems in family relationships are domestic issues, which the public has no right to interfere.

3.2. Paradigm Critical Theory Et. Al. Explaining the Relationship Between Sexual Relations and Wives' Obligations to Husbands

The concept of this study is based on a paradigm view by correlating the virtual reality available in the community. Which states that the wife is obliged to meet her husband's sexual needs in any situation and condition. In conducting a paradigm study, it is necessary to first know the meaning and what elements are related to it. Indeed, the paradigm and philosophy of law are an inseparable unit. In legal philosophy, a paradigm is placed as a framework or thought that can be implemented as a means of providing an explanation of a pattern of scientific activity (Indarti, 2010).

Denzin and Lincoln explain that paradigm is a main philosophical system, parent, or 'umbrella' which is built from 'fundamental questions' ontology, epistemology, and certain methodologies, each of which consists of a 'set' of basic beliefs or worldviews that cannot simply be exchanged with one another, postpositivism, critical theory et. al, and constructivism with the implementation of the 3 (three) 'fundamental questions' above.

Table 2. Ontology, Epistemology, and Methodology

Question	Required answer
Ontology	The form and nature of reality of a paradigm
Epistemology	The nature of the relationship or relationship between individuals and community groups with the environment of a paradigm
Methodology	The way in which individuals or community groups get answers to what they want to know from a paradigm

Source: Indarti (2010), Discretion and Paradigm: A Study of Legal Philosophy

Indeed, forcing or violent sexual relations between a husband and his wife is one of the scientific actions that can be studied through a paradigm window. This is because there is a patriarchal concept, which contains a false gender and cultural reality that the wife is always submissive to her husband and the husband is free to rule over his wife. One of the paradigms that emphasizes the relationship between gender and culture is critical theory et.al. with the characteristics of critical thinking on a problem discussed (Indarti, 2010).

Paradigm critical theory et. al. is a paradigm concept that positions itself to be a means of breaking down legal inequality and discrimination that exists in reality. This paradigm is a set of belief sets that become a critical answer to historical values that have been crystallized with erroneous and erroneous understandings (Heradhyaksa & Aji, 2020). The existence of Critical Theory et. al. often considered as the emergence of the Feminist Legal Theory flow which together seeks justice against an existing inequality (Sulistyawan, 2018; Irianto, 2006). The specific explanation regarding the critical theory paradigm et. al to the basic questions, namely:

Table 3. Critical Theory Paradigm Et. Al

Question	Answer
Ontology	It is an answer to historical realism formed from social, political, cultural, economic, ethnic, and 'gender' factors. Which is then crystallized and considered 'real'
Epistemology	It is a transactional/subjective answer. In which the adherents and related objects observed are carried out interactively, and a 'mediation' process is carried out on the values held by all related parties



Methodology	It is an answer that is dialogical/dialectical in which there will be a 'dialogue' between the adherent and the object of observation. Then, transform ignorance with real action
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Source: Indarti (2010)

The existence of conformity with the problem and paradigm, the author tries to provide a sharp analysis through various basic questions that exist. First, the ontology of reality that is discussed is about the fulfillment of the wife's obligations to her husband in sexual intercourse. This perspective assumes that the wife must meet the needs of her husband's sexual relationship under any circumstances. This thought has been crystallized in society, which causes the position of a wife to always be at the lowest structure in marriage. That the wife must obey the husband's request in any case (Samsudin, 2010). Thus, the fulfillment of the wife's obligations to her husband in sexual relations has been influenced by the historical realism that exists in society.

In addition, the inequality of power between husband and wife is a factor in the birth of marital rape, this power makes husbands feel fully in control of their wives. The wife is likened to an item, where when it is purchased, it means that it is fully owned by the buyer. Likewise, with a husband who officially marries his wife, it means that he has bought the woman and has the right to do anything with the goods he buys, even though the action he takes will be dangerous.

The fully bound patriarchal culture makes people feel that marital rape is not wrong. However, they consider this as a norm, because serving their husbands according to them is the wife's obligation. The word obligation here has been misinterpreted by the community, even though the intended obligation does not have to fully follow and obey without considering the reasons put forward. Thus, the husband should understand the rejection of sexual relations by his wife, because sexual relations should be carried out on the basis of the will of both parties, not just one party. Considering that women have menstrual and postpartum cycles that cannot be forced to have sexual intercourse.

Second, answering epistemological questions, the author has strong guidelines that the wife is not obliged to fulfill her husband's sexual needs, the wife has the right to refuse the invitation in unsupportive conditions, such as postpartum, menstruation, and conditions of illness or fatigue (Syarifudin, 2017). Although this has been believed by the teachings of the Islamic religion, in the hadith it is said that sexual intercourse is the right of the husband and the obligation of the wife, so that if the wife refuses, it is considered a sin (Siregar, 2008; Cammack, 2015). In fact, in an Islamic teaching, hadith cannot be understood textually only, because mistakes in interpreting or understanding hadith will cause injustice to gender or certain parties (Sugiantari et al., 2019).

In this regard, if we examine more deeply the relationship between marital rape and the applicable provisions in human rights, it can be categorized as a violation of human rights. Because, it is judged that marital rape is an inhuman form of coercion and only considers the wife as an object to satisfy her husband's sexual desires. In line with the rights and obligations that exist in the marriage bond, if the wife is obliged to obey and serve her husband's desires, then the wife should also have the right to refuse it for certain reasons. Likewise, if the husband has the right to ask for his wife's services, then the husband is also obliged to understand and understand the reasons for his refusal in order to give birth to an equal position in the marriage bond, so that there is no inequality between the positions of husband and wife. Thus, the wife deserves to be fought for equality and is not always placed at the lowest structure in the marriage bond. And a real action is needed that can be implemented to answer the worries felt by the wife.

Third, the methodological question explains that the marriage bond has been influenced by the existence of a patriarchal culture and unequal historical structure. This causes the view of the wife's obligation to fulfill her husband's sexual needs has been misinterpreted and has consciously placed the wife's position under the husband's position. Marriage which should be the fruit of the love of a husband and wife actually becomes a parasite if this view continues to be justified. So, this needs to get more attention and real action is needed.

Thus, the real action that can be taken is to make the husband aware of the fulfillment of physical and spiritual obligations in the marriage bond, it cannot be used as a benchmark that the wife can be employed in all situations and conditions. As a wise husband, he should be able to give respect and equality to his wife, not make his wife a mere gratification of lust. Then, the wife must also have the courage to refuse and report if her husband commits marital rape, because actually special protection for marital rape in the marriage bond has also been regulated by the state in the PKDRT Law. Thus, efforts must continue to be made through the elimination of the patriarchal view that continues to exist in the marriage bond.


4. CONCLUSION

Marital rape was born from the patriarchal culture that spreads in marriage and has given the wrong perspective regarding the wife's obligations to her husband in sexual relations. The husband always has the power to do anything to his wife after officially getting married. In fact, sexual relations are carried out at the will of both parties without coercion. Thus, the inequality of power relations between wives and husbands in marriage and virtual reality is born which is wrongly realized. Therefore, it is necessary to critique this perspective through the critical theory et al paradigm. al. with basic questions ontology, epistemology, and methodology as a means of studying the way of thinking with existing problems.

First, the ontology answers that there is a wrong thought, that the wife is obliged to meet the needs of her husband's sexual relationship under any conditions, this thought has been crystallized in society and is considered a common thing. Against this thought, criticism is needed that can be used as a battering ram in changing the existing virtual reality. Second, epistemology explains the patriarchal perspective on the fulfillment of sexual needs has given birth to unequal power relations in the marriage bond, which makes the wife always positioned in the wrong and low position. So that real action is needed that can be implemented to answer the concerns felt by the wife. Third, the methodology explains that the results of the epistemological analysis can be implemented through real action by making husbands aware of the concept of fulfilling sexual obligations in marriage which cannot be used as a benchmark that wives can be employed in all situations and conditions.

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