Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan
https://jurnal.stiq-amuntai.ac.id/index.php/al-qalam
P-ISSN: 1907-4174; E-ISSN: 2621-0681
DOI : 10.35931/aq.v20i6.7596

RECONSTRUCTION OF LEGAL PROTECTION FOR SURVIVORS OF MARITAL RAPE IN DIVORCE CASES AT THE RELIGIOUS COURT: A PERSPECTIVE OF JUSTICE AND MAQASHID SHARIA

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Abstract

This study aims to analyze the legal protection for wives who are survivors of marital rape in divorce cases adjudicated in the Religious Courts and to reconstruct an integrative model of legal protection based on the perspectives of justice and maqāṣid al-sharī'ah. This research employs a normative-empirical legal method using statutory, case, and conceptual approaches. Primary data were obtained from the analysis of Religious Court decisions and in-depth interviews with judges, while secondary data were derived from legal literature and relevant scholarly works. The findings reveal that, normatively, legal protection has been provided through various legal instruments, such as the Law on the Elimination of Domestic Violence, the Law on Sexual Violence Crimes, and the Compilation of Islamic Law. However, its implementation remains suboptimal, particularly in the corrective and rehabilitative dimensions. A significant gap is identified between legal norms and judicial practices, as reflected in the limited use of sexual violence laws as legal grounds, the minimal granting of post-divorce rights ex officio, and the absence of rehabilitative protection. Therefore, this study proposes an integrative reconstruction of legal protection encompassing preventive, protective, corrective, and rehabilitative dimensions within a single divorce judgment. This reconstruction is grounded in the convergence of John Rawls's difference principle and maqāṣid al-sharī'ah, both of which emphasize prioritizing the most vulnerable parties. Accordingly, divorce judgments should not merely terminate marital relations but also function as comprehensive and justice-oriented instruments of protection for survivors.
Keywords: *marital rape, legal protection, divorce, Religious Courts, maqāṣid al-sharī'ah, justice.*

Abstrak

Penelitian ini bertujuan untuk menganalisis perlindungan hukum bagi istri penyintas kekerasan seksual dalam perkawinan (marital rape) pada perkara perceraian yang diadili di Pengadilan Agama, serta merekonstruksi model perlindungan hukum yang integratif berdasarkan perspektif keadilan dan maqāṣid al-sharī'ah. Penelitian ini menggunakan metode hukum normatif-empiris dengan pendekatan perundang-undangan, pendekatan kasus, dan pendekatan konseptual. Data primer diperoleh melalui analisis putusan Pengadilan Agama dan wawancara mendalam dengan para hakim, sedangkan data sekunder bersumber dari literatur hukum dan karya ilmiah yang relevan. Hasil penelitian menunjukkan bahwa secara normatif, perlindungan hukum telah disediakan melalui berbagai instrumen hukum, seperti Undang-Undang Penghapusan Kekerasan Dalam Rumah Tangga (UU PKDRT), Undang-Undang Tindak Pidana Kekerasan Seksual (UU TPKS), dan Kompilasi Hukum Islam (KHI). Namun, implementasinya masih belum optimal, khususnya pada dimensi korektif dan rehabilitatif. Ditemukan kesenjangan yang signifikan antara norma hukum dan praktik peradilan, yang tercermin dari terbatasnya penggunaan undang-undang kekerasan seksual sebagai dasar pertimbangan hukum, minimnya pemberian hak-hak pascaperceraian secara ex officio, serta ketiadaan perlindungan rehabilitatif. Oleh karena itu, penelitian ini

mengusulkan rekonstruksi perlindungan hukum yang integratif yang mencakup dimensi preventif, protektif, korektif, dan rehabilitatif dalam satu putusan perceraian. Rekonstruksi ini berlandaskan pada konvergensi prinsip perbedaan (difference principle) John Rawls dan maqāṣid al-sharī'ah, yang sama-sama menekankan pengutamaan terhadap pihak yang paling rentan. Dengan demikian, putusan perceraian tidak hanya berfungsi memutus ikatan perkawinan, tetapi juga menjadi instrumen perlindungan yang komprehensif dan berorientasi pada keadilan bagi penyintas.
Kata Kunci: *marital rape, perlindungan hukum, perceraian, Pengadilan Agama, maqāṣid al-sharī'ah, keadilan.*

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INTRODUCTION

The elimination of sexual violence has become a serious agenda in the enforcement of human rights in Indonesia since the Reformasi era. A key milestone in this agenda began with the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) through Law Number 7 of 1984, followed by the establishment of the National Commission on Violence Against Women (*Komnas Perempuan*) through Presidential Decree Number 181 of 1998, and reached a peak with the enactment of Law Number 23 of 2004 on the Elimination of Domestic Violence (UU PKDRT). This law represents a paradigmatic shift, transforming domestic violence from a private matter into a public concern subject to state intervention.[1]

This legislative momentum was further strengthened by the enactment of Law Number 12 of 2022 on Sexual Violence Crimes (UU TPKS) on April 12, 2022. This law explicitly regulates sexual violence within the domestic sphere, including marital rape.[2] This is also regulated under Article 8 of the Law on the Elimination of Domestic Violence (UU PKDRT) and Article 473 paragraph (6) of Law Number 1 of 2023 concerning the Criminal Code. Within this legislative framework, Indonesia now possesses a relatively comprehensive set of legal instruments to criminalize sexual violence within marriage.

However, the availability of adequate criminal law instruments does not automatically resolve the problem of legal protection for victims. Data from *Komnas Perempuan* in its annual reports from 2019 to 2023 indicate that cases of marital rape continue to occur, and these figures

[1] Khairani, *Pembentukan Undang-Undang Penghapusan Kekerasan Dalam Rumah Tangga Dan Urgensinya Untuk Ketahanan Keluarga* (Banda Aceh: Lembaga Kajian Konstitusi Indonesia, 2021), 92.
[2] Badan Legislasi DPR RI, *Naskah Akademik Rancangan Undang-Undang Republik Indonesia Tentang Tindak Pidana Kekerasan Seksual* (Jakarta, 2021), 8.

are believed to represent only the tip of the iceberg, with many more cases remaining unreported.[3] At the global level, the World Health Organization (WHO) reports that nearly one in three women (approximately 840 million individuals) have experienced violence by an intimate partner at some point in their lives.[4] However, the high prevalence of sexual violence within marriage is not matched by ease of access to justice for victims.

One structural barrier that often goes overlooked is the weak legal protection for wives who are survivors of sexual violence in divorce proceedings before the Religious Courts. In practice, many wives who experience sexual violence tend to pursue divorce rather than criminal proceedings.[5]

There are at least three reasons underlying this choice. First, divorce proceedings in the Religious Courts are considered more practical and do not extend beyond the boundaries of the family's private sphere.[6] Second, criminal proceedings require considerable effort, ranging from filing a police report and obtaining medical evidence (*visum et repertum*) to the availability of witnesses.[7] Third, filing for divorce requires only the wife's independence, without the additional level of courage that often emerges only after receiving support from advocacy institutions.[8]

Problems arise when wives, as victims of sexual violence, choose this path of divorce. In practice before the Religious Courts, the most commonly cited ground for divorce is "continuous disputes and quarrels."[9] or "broken marriage," a general ground that does not place fault or the identification of the perpetrator as the basis of legal consideration. This approach resembles the concept of no-fault divorce, which essentially sets aside the question of who is at fault and who

[3] Komisi Nasional Anti Kekerasan terhadap Perempuan, *Momentum Perubahan: Peluang Penguatan Sistem Penyikapan Di Tengah Peningkatan Kompleksitas Kekerasan Terhadap Perempuan* (Jakarta, 2024), viii, https://www.komnasperempuan.go.id.

[4] "Lifetime Toll: 840 Million Women Faced Partner or Sexual Violence," World Health Organization, last modified November 2025, accessed December 10, 2025, https://www.who.int/news/item/19-11-2025-lifetime-toll--840-million-women-faced-partner-or-sexual-violence.

[5] Ardhina Shafa Sipayung and Mualimin Mochammad Sahid, "Awakening Women's Agency through Organizations: Legal Attitude of Muslim Women Victims of Marital Rape," *Al-Ahwal* 15, no. 2 (2022): 265.

[6] Siti Musawwamah, "Divorcing Husbands as a Solution to Protect Women's Dignity: A Case Study of Domestic Violence at Madura Religious Court," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 2 (2022): 1019.

[7] Fathiyah Wardah, "Korban KDRT Lebih Memilih Perceraian Daripada Pidana," VOA Indonesia, last modified 2019, accessed November 10, 2024, https://www.voaindonesia.com/a/korban-kdrt-masih-pilih-perceraian-daripada-pidana-/5141998.html.

[8] Sipayung and Sahid, "Awakening Women's Agency," 267.

[9] Badan Pusat Statistik RI, "Jumlah Perceraian Menurut Provinsi Dan Faktor," last modified February 14, 2025, accessed July 20, 2025, https://www.bps.go.id/id/statistics-table/3/YVdoU1IwVmlTM2h4YzFoV1psWkViRXhqTlZwRFVUMDkjMw==/jumlah-perceraian-menurut-provinsi-dan-faktor-penyebab-perceraian--perkara---2024.html?year=2024.

needs to be protected.[10] As a consequence, the sexual violence experienced by the wife often does not become the focus of proof and is not even explicitly disclosed in the petition.

This condition is clearly reflected in two Religious Court decisions examined in this study. In Case Number 366/Pdt.G/2024/PA.Bjr and Case Number 2907/Pdt.G/2023/PA.Badg, the husband was proven to have committed sexual violence; however, this fact did not receive proportional consideration from the panel of judges, resulting in the absence of sanctions that could prevent similar acts in the future. Moreover, in the second case, the claims for *mut'ah* and *iddah* maintenance were rejected on formal grounds, which may potentially preclude the submission of new claims for these rights due to the principle of *ne bis in idem*.

Previous academic studies linking the theme of legal protection for victims with divorce cases in the Religious Courts remain fragmented. Some studies merely position sexual violence as a ground for filing for divorce, as seen in the research by Dedi Sumanto et al.[11] and Zaenal Arifin.[12] In addition, some scholars have conducted studies aimed at analyzing the legal construction of the permissibility of divorce on the grounds of sexual violence from a fiqh perspective, as seen in the work of Armansyah.[13] and research from Andy Litehua[14], as well as the construction of positive law and its practical application regarding sexual violence as a ground for divorce, as examined in the study conducted by Roikhatul Maghfiroh[15] and Deri Rizal et.al.[16] Other studies focus on post-divorce rights of wives that are corrective in nature, such as *iddah* maintenance and *mut'ah*.[17]

Studies examining preventive, protective, or rehabilitative forms of legal protection are more commonly discussed within the domain of criminal law. This is reflected, for example, in research on the integration of civil and criminal legal systems conducted by Naqiyah and Nita

[10] Anang Permana, "Kepastian Dan Perlindungan Hukum Penyelesaian Sengketa Perceraian Dalam Peraturan Perundang-Undangan Dan Implementasinya Dalam Putusan Pengadilan Agama Di Lingkungan Pengadilan Tinggi Agama Jawa Barat" (UIN Sunan Gunung Djati, 2022), 172.

[11] Dedi Sumanto, Titin Samsudin, and Fikri Hi Asnawi Amiruddin, "The Existence of the Religious Court in Handling Divorce Cases on the Reason of Domestic Violence," *Jambura Law Review* 3, no. 2 (2021): 228–29.

[12] Zaenal Arifin, "Analisis Fenomena Marital Rape Terhadap Angka Perceraian Perspektif Hukum," *SAMAWA: Jurnal Hukum Keluarga Islam* 3, no. 1 (2023): 101, https://doi.org/10.53948/samawa.v3i2.95.

[13] Armansyah, "Marital Rape Sebagai Alasan Perceraian Dalam Hukum Islam Perspektif Ijtihad Maqashidi" (Universitas Islam Negeri Sultan Syarif Kasim, 2016), 398.

[14] Andy Litehua, "Marital Rape Dalam Perspektif Fikih Klasik," *Jurnal Pro Justicia* 2, no. 2 (2022): 10.

[15] Roikhatul Maghfiroh, "Kekerasan Seksual (Pemerkosaan) Dalam Rumah Tangga Sebagai Alasan Pengajuan Perceraian Dalam Tinjauan Hukum Islam Dan Hukum Positif," *Al-Mazahib* 7, no. 2 (2019): 248.

[16] Deri Rizal, Desi Asmaret, and Muhammad Hizbi Islami, "Perlindungan Hukum Keluarga Islam Di Indonesia Terhadap Korban Kekerasan Seksual," *eL-Hekam: Jurnal Studi Keislaman* 7, no. 2 (2022): 144.

[17] Saeroni, "Perlindungan Hukum Bagi Istri Korban Kekerasan Dalam Rumah Tangga Pada Putusan Perceraian Mahkamah Agung," *Jurnal Penelitian Ilmiah Intaj* 4, no. 1 (2020): 126.

Triana[18], as well as the urgency of implementing the Law on Sexual Violence Crimes, as examined by Maharani Mustika Rahayu et al.[19], and M. Chaerul Risal[20]. Studies addressing legal protection in the field of evidentiary law related to marital rape have also been examined within the criminal law framework, as discussed by Angeline Arya Danica et al.[21] Similarly, studies on rehabilitative forms of legal protection have been addressed only in relation to criminal law, as conducted by Wahyu Beny Mukti Setiawan et al.[22] and Iva Kusuma et al.[23] These studies indicate that none have addressed integrative legal protection for wives who experience sexual violence by their husbands within the civil law framework, particularly in divorce law. Existing scholarship remains fragmented: corrective protection is limited to post-divorce rights, while protective and rehabilitative measures are examined only within the criminal law regime, not in the context of divorce proceedings. Therefore, there has been no comprehensive study that examines integrative legal protection for wives who are victims of sexual violence in divorce cases before the Religious Courts.

This gap in the literature underscores the urgency of this study. Building upon the theory of legal protection[24] and John Rawls's theory of justice, particularly the difference principle, which emphasizes that justice is achieved only when legal institutions give priority to the least advantaged members of society.[25] This study seeks to reconstruct an integrative model of legal protection for wives who are victims of sexual violence in divorce cases. This reconstruction encompasses preventive, protective, corrective, and rehabilitative dimensions within a single, unified divorce judgment in the Religious Courts.

Based on the above discussion, this article aims to analyze the legal protection for wives who are survivors of sexual violence perpetrated by their husbands in divorce cases before the Religious Courts, based on both positive law and Islamic law currently in force, while also

[18] Naqiyah and Nita Triana, "Reconstruction of Integrated Legal System for Protecting the Victims of Domestic Violence in Divorce Cases," in *SHS Web of Conferences* 54 (EDP Sciences, 2018), 6.

[19] Maharani Mustika Rahayu, Tri Lisiani Prihatinah, and Pramono Suko Legowo, "Perkembangan Perlindungan Hukum Perempuan Terhadap Kekerasan Seksual Di Indonesia," *Soedirman Law Review* 5, no. 2 (2023): 633.

[20] M. Chaerul Risal, "Perlindungan Hukum Terhadap Korban Kekerasan Seksual Pasca Pengesahan Undang-Undang Tindak Pidana Kekerasan Seksual: Penerapan Dan Efektivitas," *Al Daulah: Jurnal Hukum Pidana dan Ketatanegaraan* (2022): 91.

[21] Angelina Arya Danica et al., "Kriminalisasi Marital Rape: Eksistensi Dan Pembuktiannya," *Yustika: Media Hukum dan Keadilan* 25, no. 1 (2022): 8.

[22] Wahyu Beny, Mukti Setiyawan, and Hadi Mahmud, "Menggagas Model Restorative Justice Terhadap Tindak Pidana Marital Rape Dalam Membentuk Perlindungan Terhadap Perempuan Yang Sesuai Dengan Norma Hukum Di Indonesia," *Jurnal Ius Constituendum* 3, no. 1 (2018): 68.

[23] Iva Kasuma et al., "Another Second Chance: Rehabilitation of Marital Rape Offender for the Victim's Recovery," *Indonesian Journal of Socio-Legal Studies* 1, no. 2 (2022): 1.

[24] Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia: Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum Dan Pembentukan Peradilan Administrasi Negara* (Surabaya: PT. Bhina Ilmu, 1987), 1.

[25] John Rawls, *A Theory of Justice* (Yogyakarta: Pustaka Pelajar, 2006), 72.

reconstructing an integrative model of legal protection for survivors of marital rape in such cases from a justice perspective.[26]

Based on the above background, this article formulates two main research questions. First, how is legal protection for wives who are survivors of sexual violence perpetrated by their husbands in divorce cases before the Religious Courts, according to the prevailing positive law and Islamic law? Second, how can an integrative model of legal protection for such survivors be reconstructed in divorce cases before the Religious Courts from a justice perspective?

In line with the above issues, this article has two main objectives. The first is to analyze the legal protection for wives who are survivors of sexual violence perpetrated by their husbands in divorce cases before the Religious Courts, based on the prevailing positive law and Islamic law. The second is to reconstruct an integrative model of legal protection for wives who are survivors of marital rape in such cases from a justice perspective, so that divorce judgments do not merely terminate the marital bond but also function as instruments of protection encompassing preventive, protective, corrective, and rehabilitative dimensions within a unified framework.

RESEARCH METHODS

This study is a normative-empirical legal research examining legal protection for wives who are survivors of marital rape in divorce cases before the Religious Courts, both from the perspective of prevailing legal norms and their implementation in judicial practice. It employs three approaches simultaneously: the statutory approach, the case approach, and the conceptual approach.

The primary data of this study were obtained through two methods. First, a document analysis of five Religious Court decisions involving divorce cases accompanied by facts of sexual violence committed by the husband, as presented in Table 1. Second, in-depth interviews and surveys with Religious Court judges who have experience in handling similar cases were conducted to obtain direct insights into judicial practices.

Table 1**.** Religious Court Decisions as the Object of Study

No.	Case Number	Religious Court	Year
1	366/Pdt.G/2024/PA.Bjr	Banjarnegara	2024
2	2907/Pdt.G/2023/PA.Badg	Bandung	2023
3	1074/Pdt.G/2024/PA.Nph	Nunukan	2024
4	1504/Pdt.G/2017/PA.Dpk	Depok	2017
5	84/Pdt.G/2020/PA.Tmk	Tamansari	2020

Source: Primary research data, processed (2024–2025).

[26] Khairani, *Pembentukan Undang-Undang Penghapusan Kekerasan*, 94.

Secondary legal materials consist of scholarly literature, including books, journal articles, and academic works that discuss legal protection for victims of sexual violence, marital rape, and contemporary Islamic family law. Tertiary legal materials, such as legal dictionaries and encyclopedias, are used to support the understanding of technical juridical concepts.

The analysis is conducted in a prescriptive manner: not merely describing the existing legal conditions (*das sein*), but also evaluating and reconstructing how the law ought to be (*das sollen*), based on the framework of Hadjon's theory of legal protection and Rawls's theory of justice.

RESULTS AND DISCUSSION

Legal Protection for Survivors of Marital Rape under Positive Law and Islamic Law

Normatively, a number of national and international legal instruments have provided a foundation for the protection of wives who are survivors of marital rape. The Law on the Elimination of Domestic Violence (UU PKDRT) criminalizes sexual violence within the household while also regulating the obligation of the state to undertake preventive measures,[27] handling, and recovery.[28] In addition, the Law on the Elimination of Domestic Violence (UU PKDRT) also aims to empower survivors, both physically and psychologically.[29] The Law on Sexual Violence Crimes (UU TPKS) aims to strengthen this framework through an integrated justice system,[30] restitution rights, and an evidentiary system that takes into account the specific conditions of survivors.[31]

In Islamic law, the prohibition of sexual violence within marriage is grounded in the principle of *mu'āsyarah bil ma'rūf*, which emphasizes mutual kindness and proper conduct between spouses in order to prevent *ḍarar ma'nawī* (non-physical harm).[32] Moreover, sexual violence within marriage is also inconsistent with *maqāṣid al-sharī'ah*, which aims to protect life, dignity, and lineage from all forms of harm.[33]

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[27] Article 12 of *Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga* (Indonesia, 2004).

[28] Margie Gladies Sopacua, "Konsep Ideal Pencegahan Kekerasan Dalam Rumah Tangga Terhadap Perempuan," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022): 220–21.

[29] Heni Hendrawati and Agna Susila, "Kajian Yuridis PP No 4 Tahun 2006 Tentang Penyelenggaraan Dan Pemulihan Korban Kekerasan Dalam Rumah Tangga," *Varia Justicia* 13, no. 2 (2017): 118.

[30] Ayu Mirah Iswari Karna and I Ketut Rai Setiabudhi, "Quo Vadis Perlindungan Korban Tindak Pidana Kekerasan Seksual Di Indonesia," *Jurnal Magister Hukum Udayana* 12, no. 3 (2023): 626.

[31] Article 25 of *Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual* (Indonesia, 2022).

[32] Afif Thohir Furqoni and Abdul Mukti Thabrani, "Islamic Legal Ethics to Marital Rape: Juxtaposing Mu'āsyarah Bi al-Ma'rūf and Ḍarār Ma'nawi Principles," *Al-Ahwal* 15, no. 1 (2022): 128.

[33] Zikri Darussamin and Armansyah, "Marital Rape Sebagai Alasan Perceraian Dalam Kajian Maqasid Syari'ah," *Al-Ahwal* 12, no. 1 (2019): 90–91.

The classical fiqh construction of marital sexual relations, which tends to position sexual relations as the husband's absolute right, as reflected in the views of Ibn Taymiyyah,[34] needs to be reinterpreted using the framework of *qirā'ah mubādalah*. Through this framework, a reciprocal (mutual) reading is applied, requiring the principle of *mu'āsyarah bil ma'rūf* to serve as a fundamental condition for every sexual relationship within marriage.[35] With this interpretation, the coercion of sexual relations by a husband against his wife not only violates positive law but also contradicts the values of *sharī'ah* that constitute the spirit of Islamic family law.

Based on the analysis of the applicable legal instruments, the available legal protection encompasses four dimensions (preventive, protective, corrective, and rehabilitative) although their scope remains uneven. Table 1 below summarizes the legal protection provided under each of the main legal instruments.

Table 2. Legal Protection for Survivors of Marital Rape in Legal Instruments

Legal Basis	Preventive	Protective	Corrective	Rehabilitative
PKDRT Law (2004)	The Obligation of Domestic Violence Prevention by the Government and Society	Temporary Protection; Companion (Victim Assistance); Special Evidentiary System	Criminal sanctions; restriction of the offender's movement.	Counseling sanctions for the offender.
TPKS Law (2022)	Detailed prevention measures; community involvement; literacy on the Law on the Crime of Sexual Violence (TPKS Law).	Integrated Criminal Justice System for Handling Cases of Violence Against Women (SPPT-PKKTP); special evidentiary system.	Imprisonment, fines, and additional penalties.	Victims' rights to recovery and restitution/compensation.
Compilation of Islamic Law (KHI).	Not specifically regulated.	Grounds for divorce: cruelty or severe abuse.	Mut'ah (a recommended gift), even in cases of divorce initiated by the wife (contested divorce).	Not specifically regulated.
SK KMA 032/2006	Not specifically regulated.	The Domestic Violence Law (UU PKDRT) as substantive and procedural law in Religious Courts; assistance/support for wives.	Ex officio provision of iddah maintenance in divorce initiated by the wife due to violence.	Not specifically regulated.

[34] Taqyuddin Ibn Taymiyyah, *Majmu'ah al-Fatawa*, vol. 32 (Cairo: Dar al-Wafa, n.d.), 175.

[35] Ade Rosi Siti Zakiah et al., "The Marital Rape Phenomenon as a Form of Gender Oppression: An Analysis of the Urgency of Sexual Consent Mubādalah's Perspective," *HUMANISMA: Journal of Gender Studies* 7, no. 2 (2023): 171.

Legal Basis	Preventive	Protective	Corrective	Rehabilitative
SEMA No. 2/2019 & 3/2023	Not specifically regulated.	Exception to the 6-month separation requirement if domestic violence (KDRT) is proven.	Iddah maintenance and mut'ah as rights of a non-nusyuz wife.	Not specifically regulated.
Perma No. 3/2017	Prevention of discrimination against survivors.	Judicial ethics guidelines; legal interpretation from a gender equality perspective.	Not specifically regulated.	Not specifically regulated.

Source: Authors' analysis of the legal instruments.

Based on the table above, preventive and protective legal protections have been regulated more comprehensively compared to corrective and rehabilitative protections. Nevertheless, rehabilitative legal protection in the context of divorce cases within the Religious Courts has not been specifically regulated. Furthermore, the existing norms remain general in nature and are not explicitly designed to address divorces resulting from sexual violence, thereby making their implementation highly dependent on the perspectives adopted by judges.

Implementation of Legal Protection: Findings from a Survey of Judges and Judicial Decision Analysis

This study analyzes 26 judges of the Religious Courts in the West Java region through a survey, as well as 12 divorce decisions involving facts of sexual violence committed by husbands. The findings reveal a significant gap between the normative framework and its implementation in practice.

In the protective dimension, only 17 judges (65.38%) reported using the Law on the Elimination of Domestic Violence (UU PKDRT) and/or the Law on Sexual Violence Crimes (UU TPKS) as their legal basis, while 9 judges (34.62%) relied solely on conventional divorce legal grounds. Of the 12 decisions analyzed, only 5 explicitly cited the UU PKDRT as a legal basis, and none referred to the UU TPKS. The majority of judges (65.38%) applied the ordinary civil evidentiary system, despite the fact that the UU PKDRT, designated as both substantive and procedural law for the Religious Courts through Supreme Court Decree No. KMA/032/SK/IV/2006, allows for a more accommodative evidentiary system for survivors.

In the corrective dimension, 9 out of the 12 decisions recognized sexual violence as a legal fact. However, regarding the allocation of post-divorce rights for wives, only one decision—1504/Pdt.G/2017/PA.Dpk, granted *mut'ah* to the wife ex officio, without a prior request. In Decision No. 2907/Pdt.G/2023/PA.Badg, claims for *mut'ah* and *iddah* maintenance that were explicitly requested were instead rejected on formal procedural grounds, which may preclude the filing of a new claim due to the principle of *ne bis in idem*. This reflects a structural bias that prioritizes procedural formalities over substantive justice for survivors.

In the rehabilitative dimension, the most significant finding is the complete absence of such protection. The majority of judges (88.46%) believe that the Religious Courts do not have the authority to impose or recommend rehabilitation. None of the 12 decisions included any recommendation for rehabilitation, either for perpetrators or survivors. This represents the most substantial gap between the need for legal protection and existing judicial practice.

These findings are consistent with Ramadhita's observations regarding gender bias in Indonesian divorce procedural law[36] and differ from the findings of Stijn Cornelis van Huis, who concluded that the gender sensitivity of judges in the Religious Courts is already adequate.[37] This difference can be understood by considering that the Religious Courts have been relatively responsive to general gender issues (such as *iddah* maintenance and *mut'ah*), yet remain less optimal in addressing cases involving wives who experience sexual violence perpetrated by their husbands.

Table 3**.** Implementation of Legal Protection in Judicial Decisions and Judges' Understanding

No.	Legal Protection	Forms of Protection	Empirical Findings
1	Protective	a. Application of legal basis that takes into account the specific conditions of sexual violence (PKDRT Law/TPKS Law). b. An evidentiary system that considers the specific circumstances of wives as survivors. c. Exception to the 6-month separation requirement (SEMA No. 3/2023).	5 out of 12 decisions used the Domestic Violence Law (UU PKDRT) as a legal basis. 10 out of 12 decisions considered special evidentiary circumstances. All decisions applied the exception to the separation-of-residence requirement.
2	Corrective	a. Inclusion of sexual violence as a ground for divorce in the legal facts. b. Imposition of mut'ah, iddah maintenance, and past maintenance (arrears) on the husband.	9 out of 12 decisions included sexual violence in the factual findings. Only 1 decision granted mut'ah ex officio (Religious Court of Depok). 1 decision wrongly rejected the wife's rights (Bandung Religious Court).
3	Rehabilitative	Not found in either the decisions or the majority of judges' reasoning.	0 out of 12 decisions included rehabilitation recommendations. 88.46% of judges held that the Religious Court (PA) has no authority.

Source: Survey of 26 Religious Court judges and analysis of 12 decisions, processed by the authors.

Reconstruction of Just Legal Protection: The Perspective of John Rawls's Difference Principle and Maqashid Sharia

The reconstruction of legal protection for wives who are survivors of marital rape in divorce cases within the Religious Courts can, in essence, be built upon two major frameworks

[36] Ramadhita, "Bias Gender Dalam Hukum Acara Perceraian Di Indonesia: Latar Belakang, Dampak, Dan Solusinya," *De Jure: Jurnal Hukum dan Syar'iah* 14, no. 1 (2022): 15–16.

[37] Stijn Cornelis van Huis, "Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba" (PhD diss., Leiden University, 2015), 270, http://hdl.handle.net/1887/35081.

that substantively reinforce one another: John Rawls's theory of justice from the modern legal philosophy tradition, and *maqāṣid al-sharīʻah* along with *qawāʻid fiqhiyyah* from the Islamic legal tradition. Together, these frameworks provide a foundation for a legal system that does not remain neutral when confronted with structural injustice.

Through his *difference principle*, John Rawls asserts that social and economic inequalities are only justifiable if they benefit the least advantaged members of society.[38] In this context, wives as survivors of marital rape represent the doubly least advantaged group. They bear the trauma of sexual violence while simultaneously confronting a divorce legal system that has not been designed to actively protect them. For John Rawls, a legal institution that allows such conditions to persist without correction is inherently unjust, as justice requires prioritizing the vulnerable rather than merely upholding formal procedural equality.[39]

Islamic law, through *maqāṣid al-sharīʻah*, articulates a parallel normative demand. Abu Ishaq al-Shatibi formulated the ultimate objectives of the Sharīʿah as the preservation and protection of five essential human interests: religion, life (*nafs*), intellect (*ʻaql*), lineage (*nasl*), and property (*māl*). This framework was further developed by Jasser Auda, who argues that *maqāṣid al-sharīʻah* should not be understood merely as a list of prohibitions, but as a dynamic system that must actively generate public welfare (*maṣlaḥah*), including through institutional design and judicial *ijtihād*.[40] In the context of divorce cases involving marital rape, *maqāṣid al-sharīʻah* demands more than merely granting the divorce petition; it requires that the entire legal process (from evidentiary proceedings to judicial decisions) actively safeguard the survivor's life, dignity, and continuity of well-being.

The most fundamental point of convergence between John Rawls and *maqāṣid al-sharīʻah* lies in their shared rejection of a passive and neutral conception of justice. John Rawls rejects utilitarianism, which justifies the sacrifice of individuals for the greater good of the majority.[41] For John Rawls, justice requires ensuring that the most vulnerable are not left to bear disproportionate and unjust burdens.[42] Similarly, *maqāṣid al-sharīʻah* rejects the rigid application of law that disregards the specific conditions of those in need of protection. This reflects the spirit

[38] Rawls, *A Theory of Justice*, 72.

[39] Nur Solikin and Moh Wasik, "The Construction of Family Law in the Compilation of Islamic Law: A Review of John Rawls's Concept of Justice and Jasser Auda's Maqashid al-Shari'a," *Ulumuna* 23, no. 1 (2023): 337.

[40] Nasruddin Yusuf et al., "Examining the Basis of Maqashid Sharia in Renewal of Islamic Law in Indonesia," *PETITA: Jurnal Kajian Ilmu Hukum dan Syariah* 9, no. 1 (2024): 367.

[41] Theofransus Litaay, "Theory of Justice's Principles for a Just and Equitable Global Order," *Journal of Law, Politic and Humanities* 6, no. 1 (2025): 569.

[42] Rawls, *A Theory of Justice*, 72.

of *istiṣlāḥ* (*maṣlaḥah mursalah*), which justifies judicial *ijtihād* beyond the literal text in pursuit of tangible public welfare.[43]

The fiqh maxim *lā ḍarar wa lā ḍirār*, meaning "there should be neither harm nor reciprocation of harm," further reinforces this principle,[44] It may be interpreted as a fiqh-based counterpart to John Rawls's difference principle. Both reject a passive stance by the state or legal system in the face of injustice affecting the vulnerable. Moreover, the maxim *al-ḍarar yuzāl* ("harm must be eliminated") goes even further by imposing an active obligation on legal institutions to remove harmful conditions, requiring not only the prevention of harm, but also the restoration of conditions after harm has occurred.[45]

This convergence provides a dual foundation of legitimacy for the proposed reconstruction: philosophically, it is mandated by the universal logic of justice as articulated by John Rawls; theologically and juridically, it is required by the higher objectives of Sharīʿah and long-established fiqh maxims. Thus, this reconstruction is not merely a modern reformist demand, but also an imperative emerging from within the Islamic legal tradition itself.

The reconstruction of the law enforcement dimension encompasses four key measures: optimizing *Posbakum* (Legal Aid Posts), strengthening judges' understanding, mainstreaming gender justice, and enhancing inter-institutional system integration. From a Rawlsian perspective, judges who apply the law in a purely positivistic manner (without considering the specific conditions of survivors) are effectively practicing a form of biased justice. This is because Indonesia's divorce legal system is not designed under neutral conditions, but rather within a patriarchal structure that positions women in a subordinate role.

Islamic law reinforces this argument through two avenues. First, the obligation of *muʻāsharah bi al-maʻrūf* is not merely an internal norm governing the relationship between husband and wife,[46] but also constitutes a standard that judges must employ in assessing the legal facts of divorce cases. When a husband violates *muʻāsharah bi al-maʻrūf* through sexual violence, a judge who disregards such facts effectively allows *ḍarar* (harm) to persist—something explicitly prohibited by the maxim *lā ḍarar*. Second, Supreme Court Regulation No. 3 of 2017 on Guidelines for Adjudicating Cases Involving Women in Conflict with the Law represents a positive institutional implementation of *muʻāsharah bi al-maʻrūf*. It obliges judges to take into account the specific conditions of women, including survivors of sexual violence.

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[43] Silmi Mursidah, "Analisis Maslahah Terhadap Perma Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum," *Al-Hukama: The Indonesian Journal of Islamic Family Law* 8, no. 1 (2018): 220.

[44] Siti Nor Fazillah Abdullah and Azli Fairuz, "From Islamic Legal Maxims to Environmental Regulation: Reframing Qawaid Fiqhiyyah Kubra in Contemporary Environmental Governance," *IJRISS: International Journal of Research and Innovation in Social Science* 9, no. 12 (2025): 1821.

[45] Abdullah and Fairuz, "From Islamic Legal Maxims," 1822.

[46] Furqoni and Thabrani, "Islamic Legal Ethics to Marital Rape," 128.

The *qirā'ah mubādalah* approach developed by Faqihuddin Abdul Kodir provides a strong theological foundation for mainstreaming gender justice within judicial practice.[47] If the marital relationship must be interpreted reciprocally (where what is obligated upon the wife equally applies to the husband) then a just judge must also read every fact presented in court through a reciprocal lens. A judge's reluctance to consider the specific conditions of survivors reflects a form of bias that is inconsistent with the spirit of *mubādalah*. A judge guided by a *mubādalah* paradigm would interpret acts of sexual violence not as a "failure of the wife to fulfill her obligations," but rather as a "violation by the husband of the reciprocal principles of marriage."

Protective measures include informing the wife, as a survivor, of her right to obtain legal or psychological assistance, granting permission for separation of residence during the trial process, and utilizing the Law on the Elimination of Domestic Violence (UU PKDRT) and/or the Law on Sexual Violence Crimes (UU TPKS) as the legal basis,[48] and the use of an accommodative evidentiary system. From the perspective of John Rawls's difference principle, failing to inform survivors of their right to obtain assistance constitutes a clear example of structural injustice: survivors who have already endured the trauma of sexual violence are compelled to navigate complex legal proceedings alone, without support, while the system provides no compensatory mechanism for this inequality.

Maqāṣid al-sharī'ah reinforces this argument from the perspective of *ḥifẓ al-nafs* (the protection of life). The preservation of life does not merely entail preventing physical death, but also safeguarding individuals from profound psychological harm. Contemporary scholars such as Wahbah al-Zuhayli and Yusuf al-Qaradawi emphasize that coercive sexual relations within marriage constitute a form of *ẓulm* (injustice), as they negate consent and violate the principle of *mu'āsharah bi al-ma'rūf*.[49] When such *ẓulm* has occurred and the survivor brings the case before the court, informing her of the right to obtain assistance and temporary protection becomes a direct consequence of the maxim *al-ḍarar yuzāl*: the harm already suffered by the survivor must not be exacerbated.

With regard to the evidentiary system, John Rawls's difference principle demonstrates that the ordinary civil evidentiary system (which presumes equality between plaintiff and defendant) is in fact unjust in the context of marital rape. Sexual violence structurally occurs

[47] Faqihuddin Abdul Kodir, *Qira'ah Mubadalah: Tafsir Progresif Untuk Keadilan Gender Dalam Islam* (Yogyakarta: IRCiSoD, 2019), 410.

[48] Mahkamah Agung RI, *Keputusan KMA Nomor KMA/032/SK/IV/2006 Tentang Pedoman Pelaksanaan Tugas Dan Administrasi Peradilan Agama Buku II: Pedoman Teknis Administrasi Dan Teknis Peradilan Agama*, rev. ed. (Indonesia, 2013).

[49] Ainul Mardhiah, Muhammad Syahnan, and Muhammad Iqbal Irham, "Sexual Violence in Marriage (Marital Rape): A Fiqh Perspective and the Sexual Violence Crimes Law (UU TPKS)," *Journal Analytica Islamica* 15, no. 1 (2026): 1638, http://jurnal.uinsu.ac.id/index.php/analytica.

within the most private sphere, often without witnesses. Imposing the same evidentiary standard as in ordinary cases effectively allows structural inequality to operate without correction. The maxim *lā ḍarar* adds a sharper dimension: an evidentiary system that fails to accommodate the specific conditions of sexual violence itself becomes a new source of *ḍarar* (harm) for the survivor. Therefore, the adoption of the evidentiary system under Articles 24–25 of the Law on Sexual Violence Crimes (UU TPKS) into the procedural law of the Religious Courts is not merely a technical innovation, but an obligation required both by Rawlsian justice and by the maxim *lā ḍarar* in Islamic law.

Corrective protection includes the explicit recognition of sexual violence as a legal fact in judicial decisions, the imposition of *mut'ah*, *iddah* maintenance, and past maintenance (*nafkah lampau*) *ex officio*, as well as the imposition of compensation for sexual violence as a tort (*perbuatan melawan hukum*) within marriage.

From the perspective of John Rawls, the corrective dimension represents the implementation of the principle that a just legal institution is not only forward-looking and distributive, but also backward-looking and reparative. This principle holds that those who have been harmed by structural injustice are entitled to tangible remedies, not merely formal recognition.[50] The inclusion of sexual violence as a recognized legal fact in judicial decisions constitutes a crucial first step: without such acknowledgment, all subsequent mechanisms of reparation lack a foundational basis.

Islamic law provides further legitimacy through *fiqh munākaḥāt*, in which the concepts of *mut'ah* and *iddah* maintenance function as corrective instruments aligned with the spirit of reparation. Both constitute obligations of the husband arising from the harm caused by the dissolution of marriage. In the context of marital rape (where the husband is the culpable party) their imposition *ex officio* by the judge becomes a justified and necessary measure[51] is an imperative of justice that cannot be compromised.

The most significant breakthrough in the corrective dimension lies in the construction of tort (*perbuatan melawan hukum*) within marriage as a basis for claims of compensation. The maxim *lā ḍarar wa lā ḍirār* not only prohibits the occurrence of harm but, through its derivative principles, *al-ḍarar yuzāl* and *al-ḍarar yudfa' bi qadr al-imkān* ("harm must be prevented to the greatest extent possible"), also mandates active efforts to eliminate and prevent harm[52], It also mandates the existence of reparative mechanisms for harm that has already occurred. In modern legal systems, such mechanisms may take the form of compensation imposed upon the

[50] Timothy Waligore, "Rawls, Self-Respect, and Assurance: How Past Injustice Changes What Publicly Counts as Justice," *Politics, Philosophy and Economics* 15, no. 1 (2015): 2.

[51] Mahkamah Agung RI, *Keputusan KMA Nomor KMA/032/SK/IV/2006*.

[52] Al-Suyuti, *Al-Asybah Wa al-Nazhair Fi Qawa'id Wa Furu' Fiqh al-Syafi'iyyah* (Beirut: Dar al-Kutub al-Islamiyyah, n.d.), 84.

perpetrator. This construction is not merely an analogy, but rather a direct translation of the maxim *lā ḍarar* into contemporary civil law instruments. John Rawls's difference principle further strengthens this argument from another angle: without a compensation mechanism, perpetrators of marital rape do not bear legal consequences proportionate to the harm they have caused, and the distribution of legal burdens and benefits becomes unjust for the survivor.

Rehabilitative protection in the form of recommendations for psychiatric counseling for perpetrators and vocational training for survivors represents the most innovative (yet also the most juridically challenging) dimension, given that the majority of judges consider such measures to fall outside the jurisdiction of the Religious Courts. It is precisely at this point that the integration of John Rawls's theory of justice and Islamic law becomes most necessary to open new pathways of legal argumentation.

For John Rawls, a just legal institution must be oriented not only toward retributive justice (punishing the perpetrator), but also toward a form of justice that enables all parties (including the perpetrator) to reintegrate as productive members of society.[53] Recommendations for rehabilitation for perpetrators of marital rape represent a forward-looking conception of justice aimed at breaking cycles of violence so that no future survivors emerge. From this perspective, the absence of such recommendations is not a form of neutrality, but rather a form of omission that indirectly endangers other women who may become future victims.

Islamic law legitimizes this dimension through the doctrine of *istiṣlāḥ* (*maṣlaḥah mursalah*).[54] There is no explicit textual prohibition (*naṣṣ*) preventing judges from including rehabilitation recommendations within the legal reasoning of divorce judgments, and there are clear and tangible benefits (*maṣlaḥah*) to be gained. The *maqāṣid* framework, particularly in the dimension of *ḥifẓ al-'aql* (the protection of intellect), further strengthens this argument. Distorted patterns of thinking that drive sexually violent behavior constitute a form of harm to the intellect that requires restoration, not merely punishment. At the same time, recommendations for vocational training for survivors represent an implementation of *ḥifẓ al-māl* (protection of property) and *ḥifẓ al-nafs* (protection of life). Ensuring that survivors attain economic independence (so they do not return to dependence on the perpetrator) constitutes a substantive and long-term form of safeguarding their well-being.

From an institutional perspective, such recommendations do not exceed the jurisdiction of the Religious Courts, as they are not included in the binding operative part (*amar putusan*) of the judgment, but rather in the legal reasoning, which is persuasive in nature. Judges who incorporate such recommendations are engaging in *rechtsvinding* grounded in the principle of *istiṣlāḥ*

[53] Rawls, *A Theory of Justice*, 208.
[54] Abdullah and Fairuz, "From Islamic Legal Maxims," 1822.

(*maṣlaḥah mursalah*),[55] namely, discovering legal solutions to normative gaps based on tangible public welfare (*maṣlaḥah*), as justified by this principle within *uṣūl al-fiqh*.

Judicial Ijtihad as the Meeting Point between John Rawls and Islamic Law

The core of this entire reconstruction lies in a paradigm shift in the role of judges: from *la bouche de la loi* (the mere mouthpiece of the law) to judges as active agents of justice. Both John Rawls's theory and Islamic law call for this transformation.

John Rawls emphasizes that a just legal institution requires its actors (including judges) to actively orient themselves toward the needs of the least advantaged, rather than merely applying legal norms in a formalistic manner.[56] This principle aligns directly with the obligation of judges under Article 5(1) of Law No. 48 of 2009 on Judicial Power, which requires judges to explore, adhere to, and understand the legal values and sense of justice that live within society.

Islamic law, through the doctrine of *istiṣlāḥ*, provides parallel theological legitimacy: where no explicit *naṣṣ* governs a particular situation, judges or *mujtahids* may determine the law based on tangible public welfare (*maṣlaḥah*) so long as it does not contradict the fundamental principles of Sharīʿah. Interpreting Article 116 of the Compilation of Islamic Law (*KHI*) in a teleological-systematic manner (such that sexual violence not only constitutes grounds for divorce but also activates the judge's obligation to provide integrative protection) represents a form of *istiṣlāḥ* consistent with the tradition of *ijtihād* in Islamic law. This is not a deviation from the text, but rather an application of the text in accordance with its highest objective: to realize welfare and prevent harm for all parties before the court.

Accordingly, judicial *ijtihād* that applies this integrative protection model is not only justifiable from a positive legal standpoint, but also constitutes a moral obligation demanded simultaneously by John Rawls's theory of justice and by the higher objectives of Islamic law. Two major intellectual traditions, emerging from different contexts, ultimately converge here and speak with a unified voice.

Table 4. The Convergence of John Rawls's Difference Principle and Maqāṣid al-Sharīʿah in the Reconstruction of Legal Protection

Reconstruction Elements	Rawls's Foundations of Justice	Foundations of Islamic Law	Convergence Point
Survivor companion + permit to separate from home	Difference principle: legal institutions must actively protect the least advantaged parties.	Hifzh al-nafs (maqashid) + active mu'āsyarah bil ma'rūf: the state is obliged to be present when this principle is violated	The state helps to restore the imbalance of power relations

[55] Wahbah al-Zuhayli, *Ushul Al-Fiqh al-Islamiy*, vol. 2 (Beirut: Dar al-Fikr, 1986), 752.
[56] Rawls, *A Theory of Justice*, 398.

Reconstruction Elements	Rawls's Foundations of Justice	Foundations of Islamic Law	Convergence Point
An accommodating proof system	Difference principle: inequality in access to evidence is a structural injustice that must be corrected.	Lā ḍarar: narrowing access to evidence creates new ḍarar for survivors	The legal system of evidence must not create a double burden for the injured party.
Mut'ah, iddah living, ex-officio past living	Difference principle: the distribution of legal benefits must favor the least advantaged.	Hifzh al-māl + the principle of lā ḍarar: compensation for the ḍarar experienced is a legal obligation	Substantive justice, not just formal procedural justice
Compensation for PMH in marriage	Distributive justice: the perpetrator who creates the harm must bear the consequences.	The rule of lā ḍarar + istiṣlāḥ: reparation of ḍarar is a sharia requirement, can be adopted through the judge's ijtihad	The legal responsibility of the perpetrator is not only criminal, but also civil.
Ijtihad of judges without waiting for legislation	Rawls: just legal institutions must be responsive, must not hide behind the vacuum of norms	Istiṣlāḥ: where there is no explicit text, the judge can perform ijtihad for the sake of clear benefit.	Judges are agents of justice, not just mouthpieces for laws
Rehabilitation recommendations	Justice as fairness: all parties (including perpetrators) have the right to a fair opportunity for recovery.	Hifzh al-'aql + istiṣlāḥ: rehabilitation breaks the chain of violence and maintains the welfare of society	Restorative justice, not just retributive

Source: Authors' analysis.

Based on the overall analysis above, the proposed reconstruction of legal protection is not merely a demand for modern legal reform originating outside the Islamic tradition, but also an organic continuation of principles long embedded within Islamic legal thought: *lā ḍarar wa lā ḍirār*, *maqāṣid al-sharī'ah*, *istiṣlāḥ*, *mu'āsharah bi al-ma'rūf*, and *qirā'ah mubādalah*. The convergence between the demands of Rawlsian justice and those of Islamic law in fact strengthens the position of this reconstruction as a necessity (rather than a mere policy option) in the effort to realize truly just legal protection for wives who are survivors of marital rape in the Religious Courts.

This reconstruction does not require the enactment of entirely new legislation. Most of its elements can be realized through: (1) a paradigm shift in judicial *rechtsvinding*, whereby judges interpret Article 116 of the Compilation of Islamic Law (*KHI*) in a teleological-systematic manner; (2) the issuance of technical guidelines by the Directorate General of Religious Courts (*Badilag*) of the Supreme Court of the Republic of Indonesia; and (3) the adoption of evidentiary provisions from the Law on Sexual Violence Crimes (UU TPKS) into the procedural law of the Religious Courts through a Supreme Court Circular (*SEMA*) or a new Supreme Court Regulation (*Perma*).

Through this reconstruction, divorce judgments would no longer merely terminate the marital bond, but would also function as instruments of protection encompassing preventive, protective, corrective, and rehabilitative dimensions for survivors of marital rape.

CONCLUSION

Legal protection for wives who are survivors of marital rape in divorce cases before the Religious Courts is, in fact, normatively available within both positive law and Islamic legal instruments. Various regulations such as the Domestic Violence Law (UU PKDRT), the Sexual Violence Crime Law (UU TPKS), the Compilation of Islamic Law (KHI), Supreme Court Regulation No. 3 of 2017, and Supreme Court Circular Letters No. 2 of 2019 and No. 3 of 2023 provide a legal basis for preventive, protective, and corrective protection, although rehabilitative protection has not yet been explicitly regulated within divorce law. From an Islamic legal perspective, the principles of mu'āsharah bi al-ma'rūf and maqāṣid al-sharī'ah (particularly ḥifẓ al-nafs, ḥifẓ al-'irḍ, and ḥifẓ al-nasl) fundamentally reject all forms of domestic violence, including sexual coercion. This is further reinforced by the qirā'ah mubādalah approach, which emphasizes marital relations based on reciprocity and consent.

Nevertheless, there remains a significant gap at the level of implementation, necessitating an integrative reconstruction of legal protection. This reconstruction combines John Rawls' difference principle, maqāṣid al-sharī'ah, and the fiqh maxim lā ḍarar wa lā ḍirār, which not only prohibits harm but also obligates its removal for victims. Accordingly, judicial institutions cannot remain neutral in the face of structural injustice experienced by survivors, but must actively provide comprehensive and equitable protection.

This reconstruction consists of two main pathways: law enforcement and substantive protection. The first includes strengthening Legal Aid Posts (Posbakum), improving judges' understanding of vulnerable groups, mainstreaming gender justice based on Supreme Court Regulation No. 3 of 2017 and qirā'ah mubādalah, and enhancing inter-institutional integration. The second pathway includes preventive, corrective, and rehabilitative protection, such as the application of the evidentiary system under the TPKS Law, recognition of sexual violence in court decisions, ex officio awarding of mut'ah and iddah maintenance, and rehabilitation recommendations for both victims and perpetrators. This reconstruction can be implemented without new legislation, but through judicial interpretative reform, technical guidelines from the Directorate General of the Religious Courts (Badilag), and Supreme Court Circulars or Regulations. In this way, divorce rulings do not merely terminate marriage, but also function as instruments of justice and protection for survivors.

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