

## LEGAL PROTECTION FOR VICTIMS OF "SILENT RAPE IN MARRIAGE" BASED ON A VICTIMOLOGY PERSPECTIVE

Rizki Hagina Sinulingga<sup>1</sup>, Dinda Dinanti<sup>2</sup>

Universitas Pembangunan Nasional Veteran Jakarta, Indonesia

Email : [rizkihgng@gmail.com](mailto:rizkihgng@gmail.com), [dindadinanti@upnvj.ac.id](mailto:dindadinanti@upnvj.ac.id)

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### Abstract

Sexual violence within marriage that goes unreported commonly referred to as silent rape in marriage constitutes one of the most concealed forms of human rights violation in Indonesian domestic life. This study aims to analyze the legal protection available to victims of silent rape in marriage from a victimological perspective, while identifying the normative and structural barriers that impede effective protection. The research employs a normative juridical method combining a statute approach and a case approach, supported by qualitative descriptive analysis. The findings reveal that Indonesian positive law has progressively constructed a protective framework through Law No. 23 of 2004 on the Elimination of Domestic Violence (UU PKDRT), Law no. 12 of 2022 on Sexual Violence Crimes (UU TPKS), and the New Penal Code under Law No. 1 of 2023, which collectively forms a legal safety net for victims. However, from a victimological standpoint, legislative reform alone is insufficient, as victims continue to face layered obstacles including a pervasive culture of victim blaming, social stigma, economic dependence on perpetrators, and a lack of gender-sensitive law enforcement conditions that give rise to the phenomenon of double victimization. This study concludes that the true measure of victim protection lies not in the sophistication of legal texts, but in the extent to which victims genuinely experience the benefits of that protection in their daily lives. Accordingly, regulatory harmonization, transformation of law enforcement paradigms, expansion of integrated victim services, and sustained anti-victim blaming campaigns are essential as a unified strategy for addressing silent rape in marriage in Indonesia.

**Keywords:** Silent Rape in Marriage, Victimology, Legal Protection

### INTRODUCTION

Marriage, legally and socially, is a bond between two individuals who commit to living together as husband and wife in a household with the aim of achieving physical and spiritual happiness, and plays a role in establishing the family as the basic unit of society. This relationship includes rights and obligations for both parties, including the right to consensual and non-coercive sexual relations. However, in practice, this concept is often ignored when the phenomenon of sexual violence within marriage emerges, which has become a serious problem. Domestic sexual violence, especially that which occurs without official reporting by the victim (*silent rape in marriage*), represents a violation of the human rights and dignity of victims that has not been optimally addressed by legal systems in various countries, including Indonesia. Empirical studies show that nearly one in three women worldwide have experienced physical or sexual violence by their immediate partner during their lifetime, with significant physical and mental health impacts for the victims.<sup>1</sup> Domestic sexual violence is one of the most serious and hidden forms of human rights violations in Indonesian society. The 2024 Annual Report (CATAHU) of the National Commission on Violence Against Women recorded a significant increase in the number of cases of violence against women, reaching 330,097 cases, a 14.17% increase from the previous year, with cases predominantly in the personal sphere, encompassing marital and family relationships.<sup>2</sup> This data confirms that sexual violence in the household is not

<sup>1</sup> Jaladriana, A. (2025, November 20). *WHO: 840 million women worldwide experience violence from their partners*. IDN Times. <https://www.idntimes.com/news/world/who-840-juta-perempuan-dunia-alami-kekerasan-dari-pasangan-clc2-01-vtsv1-g0pf83>

<sup>2</sup> National Commission on Violence Against Women. (2025). *CATAHU 2024: Organizing Data, Sharpening Direction—Reflections on Documentation and Trends in Cases of Violence Against Women 2024*. Jakarta: National Commission on Violence Against Women. <https://konnasperempuan.go.id/catatan-tahunan-detail/catahu-2024-menata-data-menajamkan-arrah-refleksi-pendokumentasian-dan-tren-kasus-kekerasan-terhadap-perempuan>

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merely a private matter between husband and wife, but rather a serious issue that touches on the dimensions of human rights, human dignity, and state responsibility. In the context of victimology studies, it becomes relevant as a scientific approach that positions victims as the primary subject of study, not merely passive legal objects. From this perspective, victimology aligns with the protection of victims as stipulated in Law Number 39 of 1999 concerning Human Rights. as a constitutional basis for protecting every citizen from all forms of violence.<sup>3</sup>

In academic studies, sexual violence is defined as behavior that includes acts, threats, or coercion of sexual activity without the victim's consent, either physically or through psychological pressure, including forced sexual relations within marriage.<sup>4</sup> This phenomenon is known in victimology literature as *victim blaming*, namely the tendency of society and even law enforcement to blame victims for the violence they experience, a condition that systematically weakens the victim's position and hinders access to justice. *Victim blaming* of female victims of sexual violence in Indonesia stems from a patriarchal socio-cultural construction that positions women as the party responsible for the sexual violence that befell them.<sup>5</sup> The latest victimology review in 2025 emphasized that victims of sexual violence in the household are structurally hampered by the unequal power relations between perpetrators and victims, especially in the context of marriage where culture and social norms still consider sexual relations between husband and wife as an obligation, not a right that can be denied.<sup>6</sup>

By anticipating the need for protection for victims of domestic sexual violence, Indonesia has developed a multi-layered legal framework that is normatively quite progressive. The first milestone was Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT), which for the first time criminalized domestic violence, including sexual violence, as a separate crime outside the provisions of abuse in the previous Criminal Code.<sup>7</sup> However, the PKDRT Law still left several gaps, particularly in terms of the evidentiary system and the incomplete framework for victim recovery. These gaps were later addressed by Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS). which is the most significant legislative breakthrough in protecting victims of sexual violence in Indonesia.<sup>8</sup>

Strengthening this framework, Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims (PSK Law),<sup>9</sup> provides an institutional mandate to the Witness and Victim Protection Agency (LPSK) to provide physical, psychosocial, and legal protection to victims, including proactive authority without having to wait for the victim's official request. Meanwhile, Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims technically regulates the mechanism for fulfilling victims' rights through a compensation scheme from the state and restitution from the perpetrator, a very important instrument for victims of domestic sexual violence who are often in a state of economic dependence on the perpetrator himself.<sup>10</sup>

The reform of Indonesian criminal law was further strengthened by the enactment of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code), which came into effect in 2026.<sup>11</sup> The New Criminal Code also contains a liaison article with the TPKS Law. so that victims of marital rape can simultaneously access the rights of recovery and protection as regulated in the TPKS Law.<sup>12</sup> Based on the entire description, this study is present to examine in depth and comprehensively how the victimology perspective can be used as an analytical framework to evaluate the effectiveness of legal protection for victims of domestic sexual violence in Indonesia starting from the PKDRT Law, TPKS Law, Witness and Victim Protection Law, PP on victims' rights, Human Rights Law, to the New

<sup>3</sup> Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights. State Gazette of the Republic of Indonesia 1999

<sup>4</sup> Arvy, RM (2022). *Legal protection for children as victims in cases of sexual violence from a victimology perspective*. IPMHI Law Journal, 2(1), 26–42. <https://doi.org/10.15294/ipmhi.v2i1.53748>

<sup>5</sup> Wulandari, EP, & Krisnani, H. (2020). The tendency to blame victims (victim-blaming) in sexual violence against women as a result of attribution error. *Share: Social Work Journal*, 10(2), 187-197.

<sup>6</sup> Vivi Ariyanti & Bani Syarif Maula. *Domestic Violence: Between Gender Relations and Power Relations* (2025).

<sup>7</sup> Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence.

<sup>8</sup> Law of the Republic of Indonesia Number 12 of 2022 concerning Criminal Acts of Sexual Violence.

<sup>9</sup> Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

<sup>10</sup> Government Regulation of the Republic of Indonesia Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims.

<sup>11</sup> Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code (New Criminal Code).

<sup>12</sup> Kurniawati, RD, & Nuraeni, Y. (2025). Synchronization of Rules in the New Criminal Code (Law Number 1 of 2023) and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence in Order to Protect Victims of Criminal Acts of Sexual Violence. *Proceedings Series on Social Sciences & Humanities*, 23, 134-140.

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Criminal Code and identify structural obstacles that still hinder the realization of substantive justice for victims. The purpose of this study is to analyze legal protection for victims of *silent rape in marriage* from a victimology perspective using a normative juridical approach. This study also aims to examine how the legal provisions in the Law on the Elimination of Domestic Violence, the Law on the Crime of Sexual Violence, and the new Criminal Code provide effective protection for victims of sexual violence in marriage. Furthermore, this study seeks to identify various normative and structural barriers to the implementation of this legal protection.

## RESEARCH METHODS

This study uses a normative juridical method by combining two complementary approaches, namely the statute approach *and* the case approach. The statutory approach applied with relevant positive legal provisions, namely Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law), Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS Law), Criminal Code Number 1 of 2023 (New Criminal Code). Meanwhile, the case study employs a victimology perspective, responding to the case on the KH Infotainment YouTube channel. This case is relevant for research because it accurately depicts the community's response and dynamics, supported by a chronology and valid evidence. Data validation was conducted by analyzing news sources, verifying accounts, upload times, and observing supporting data. Using these two approaches, a comprehensive study can be produced, not only focusing on punishing perpetrators but also prioritizing the rights of victims of sexual violence, particularly within the domestic sphere. The data analysis technique used in this study was descriptive qualitative analysis. It began with searching for relevant cases, then reading and understanding relevant laws and regulations. The next step was to conduct a case analysis by delving into the role of victimology in protecting victims of domestic sexual violence, prioritizing the rights and needs of victims, including recovery from trauma.

## RESULTS AND DISCUSSION

### How does Indonesia's positive law construct provide protection for victims of *silent rape in marriage*?

Sexual violence within marriage, often referred to as *silent rape in marriage*, is a phenomenon that has historically received inadequate recognition within Indonesia's legal system. Within the prevailing social construct, sexual relations between husband and wife are often viewed as an obligation that the wife cannot refuse, thus sexual coercion within marriage is not viewed as unlawful. The deeply rooted<sup>13</sup> patriarchal cultural construct within Indonesian society means that victims of *silent rape in marriage* often do not recognize themselves as victims, are reluctant to report the incident, and lack adequate legal protection.

The constitutional basis for protection for victims of silent rape in marriage rests on the guarantee of fundamental rights regulated in the 1945 Constitution of the Republic of Indonesia. Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia affirms that every person has the right to protection of themselves, their families, their honor, their dignity, and their property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right.<sup>14</sup> Meanwhile, Article 28B paragraph (2) contextually can be interpreted as state protection for every citizen from acts of violence that threaten the continuation of a dignified life.<sup>15</sup>

The first regulation that specifically and specifically provides normative recognition of sexual violence within marriage as a criminal offense is Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law).<sup>16</sup> Article 8 letter a of the PKDRT Law explicitly defines sexual violence as forced sexual intercourse committed against someone who lives within the scope of the household. This formulation of the norm expressly includes husbands as potential perpetrators of sexual violence against wives within the bonds of a legal marriage. Articles 46 and 47 of the PKDRT Law even threaten a maximum prison sentence of 12 (twelve) years and/or a maximum fine of Rp36,000,000.00 for perpetrators of sexual violence within the household, which emphasizes the seriousness of the state in addressing this issue. Although the Domestic Violence Law provides an important legal basis, several fundamental weaknesses in its implementation have resulted in suboptimal protection for victims of silent rape within marriage.<sup>17</sup> A more progressive legal framework emerged through Law Number 12 of 2022

<sup>13</sup>Alamsyah, S. (2023). Forced Sexual Relations by Husbands Against Wives (Marital Rape) (A Comparative Study of Positive Law and Islamic Law). *Syaksia: Journal of Islamic Civil Law*, 24(2), 171-186.

<sup>14</sup>Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia

<sup>15</sup> Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia

<sup>16</sup>Law Number 23 of 2004 concerning the Elimination of Domestic Violence

<sup>17</sup>Umami, R., & Utama, C. Constitutional Protection of a Wife's Physical Rights and Dignity in Marriage. *Staatsrecht: Journal of Islamic State and Political Law*, 6(1), 125-142.

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concerning Criminal Acts of Sexual Violence (UU TPKS).<sup>18</sup>The TPKS Law presents a new, more comprehensive paradigm for addressing sexual violence in Indonesia, including that which occurs within marriage. Article 6 of the TPKS Law specifically regulates power-based sexual violence, whereby a husband-wife relationship can be categorized as one containing elements of power if sexual intercourse is carried out through coercion or threats. Furthermore, Article 1 of the TPKS Law broadly defines the crime of sexual violence as encompassing any act that demeans, insults, attacks, and/or other acts against a person's body, sexual desires, and/or reproductive function.<sup>19</sup>One of the most significant breakthroughs presented by the TPKS Law is the introduction of a recovery-oriented victim protection mechanism.<sup>20</sup>Articles 67 to 93 of the TPKS Law regulate in detail the rights of victims, including the right to treatment, protection, and recovery.

The New Criminal Code (KUHP), enacted through Law Number 1 of 2023 (the New KUHP), also strengthens the legal framework for protecting victims of sexual violence within marriage.<sup>21</sup>Article 594 of the New KUHP explicitly criminalizes the act of forcing a married person to engage in sexual intercourse using violence or the threat of violence. This provision represents a historic leap in Indonesian criminal law, given that the old KUHP (*Wetboek van Strafrecht*), inherited from the Dutch colonial era, did not specifically regulate marital rape.

An analysis of the Domestic Violence Law, the Women's and Children's Empowerment Act (TPKS), and the New Criminal Code (KUHP) demonstrates a consistent pattern of progressiveness in the construction of positive Indonesian law. The PKDRT Law lays the foundation by recognizing *silent rape in marriage* as a criminal offense, the TPKS Law expands the scope of protection by strengthening victims' procedural rights and regulating comprehensive redress mechanisms; while the New Criminal Code systematically integrates these provisions into the national criminal law codification. These three regulations together form an increasingly strong *legal safety net for victims of silent rape in marriage*.

## How is the legal protection for victims of silent rape in marriage in Indonesia based on a victimology perspective?

The term victimology comes from the word victim, meaning victim, and logos, meaning science. In Latin, victimology comes from the word *victima*, meaning victim, and logos, meaning science. Terminologically, victimology is a study that examines victims and how someone is said to be a victim, which becomes a social reality.<sup>22</sup>Benjamin Mendelsohn, considered the father of modern victimology, introduced the concept of *victim precipitation* to describe the extent to which the victim's behavior contributes to the occurrence of crime.<sup>23</sup>In the context of *silent rape in marriage*, this theory has a critical negative relevance: the social construction that blames the wife for being considered "not serving her husband well" is a clear manifestation of the misuse of the concept of *victim precipitation*, which actually perpetuates violence. Therefore, contemporary victimology studies reject approaches that corner victims and shift the focus to the perpetrator's responsibility and the failure of social structures to protect victims.

The theory of *victim blaming* is one of the most relevant victimology concepts in the context of *silent rape in marriage* in Indonesia. *Victim blaming* occurs when victims are blamed for the violence they experience, whether by society, law enforcement, or family.<sup>24</sup>In practice, female victims of sexual violence in marriage are often faced with questions that place them in the wrong, such as, "Why didn't you resist?", "Isn't that a wife's duty?", or "Don't let the family's shame spread." This narrative not only reinforces victims' silence but also hinders their access to justice and legal protection. A critical victimology approach asserts that *victim blaming* is a product of unequal gender constructions and must be countered through legal reform and systematic social education. A victimology study of domestic violence victims in Buleleng Regency found that female victims face multiple barriers in accessing legal protection, including internal barriers such as fear, shame, and economic dependence on the perpetrator, as well as external barriers such as a lack of support services, social stigma from the community, and a lack of understanding

<sup>18</sup>Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence

<sup>19</sup> Hasanuddin Muhammad, "Legal Implications of the Regulation of the Rights of Victims of Sexual Violence in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence" (2022).

<sup>20</sup> Rizki Angkasa Eswari, M. Rasyid Pardede, & Emanuel Gading Sanjaya, "Legal Protection for Female Victims of Sexual Violence (TPKS Law)" in *the Journal of Legal Studies and Civic Education* (2025).

<sup>21</sup>Law Number 1 of 2023 concerning the Criminal Code

<sup>22</sup> Huda, MN (2022). Victims in a Victimology Perspective. *VOICE JUSTISIA: Journal of Law and Justice*, 6 (1), 63-69.

<sup>23</sup> Angkasa, A., Yulia, R., & Juanda, O. (2021). The urgency of victim precipitation is considered by judges in sentencing decisions. *Jurnal Wawasan Yuridika*, 5 (1), 1-19.

<sup>24</sup> Barus, ISB, & Ritonga, NU (2026). Victim blaming as a form of secondary revictimization from a victimology perspective in Indonesia. *Pemuliaan Keadilan*, 3(2). <https://doi.org/10.62383/pk.v3i2.1603>

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by authorities regarding the dynamics of gender-based violence in intimate relationships.<sup>25</sup> The findings of this study demonstrate that victims of *silent rape in marriage* do not face just one type of barrier, but rather a collection of barriers that reinforce each other, forming a wall of silence that is almost impenetrable on their own. Within the framework of victimology, this condition illustrates what academics call *double victimization*, where victims suffer both from the crime and the inability of the social and legal systems to adequately respond to the crime.

The Indonesian legal system not only fails to protect victims, but also adds to their suffering through undignified legal proceedings, driven by the intervention of authorities focused on peacemaking without considering the victims' safety and wishes.<sup>26</sup> This demonstrates that legal protection for victims of *silent marital rape* depends not only on the availability of progressive legal norms but also on the quality of their implementation, which must be based on an understanding of the dynamics of victimization. Without a transformation in the authorities' perspective, even the most progressive legal norms will lose their relevance to victim protection when faced with the realities of case handling.

Thus, effective legal protection for victims of *silent rape in marriage* requires: legislative reforms that have begun to be implemented through the Domestic Violence Law, the TPKS Law, and the New Criminal Code; a paradigm transformation of law enforcement officials that must shift from a formalistic punitive approach to a victimological approach that focuses on victim recovery; expanding the accessibility of legal aid services, psychosocial assistance, and comprehensive recovery that can reach victims across all levels of society; and a transformation of legal culture that actively deconstructs the narrative of *victim blaming*. Furthermore, the existence of this norm does not automatically guarantee real protection, but only differentiates between normative legal protection that is textual in nature and empirical legal protection that is directly experienced by victims. The benchmark for the success of the victim protection system lies not in the formulation of progressive laws, but rather in the extent to which victims actually feel the benefits of that protection in real life within the Indonesian criminal justice system.<sup>27</sup>

### CLOSING

This study concludes that Indonesian positive law has shown consistent progress in protecting victims of *silent rape in marriage*, reflected in the evolution of the Domestic Violence Law Number 23 of 2004, the TPKS Law Number 12 of 2022, and the New Criminal Code Number 1 of 2023, which together form a *legal safety net* to close the gap of impunity. However, from a victimology perspective, legislative reform alone is not enough, because victims still face normative obstacles in the form of regulatory disharmony and weak implementation, as well as structural obstacles in the form of a culture of *victim blaming*, social stigma, and a lack of gender-sensitive officials, where these conditions give rise to the phenomenon of *double victimization*. National victimology scientists emphasize that the benchmark for the success of victim protection lies not in the perfection of the formulation of the law, but in the extent to which victims actually feel the benefits in real life.

As a solution to addressing the issue of *silent marital rape* in Indonesia, this study recommends four strategic steps. *First*, regulatory harmonization between the TPKS Law and the New Criminal Code needs to be completed immediately, particularly regarding the classification of ordinary crimes and complaint-based crimes to ensure legal certainty for victims in accessing reporting channels. *Second*, the paradigm transformation of law enforcement officers through mandatory victimology- and gender-based training so that case handling shifts from a formalistic, punitive approach to one that centers on victim recovery. *Third*, the state is obliged to expand integrated services to include legal aid, psychosocial support, and effective restitution to reach all levels of society. *Fourth*, *legal culture transformation through public education and anti-victim blaming* campaigns must be a long-term strategy that is inseparable from legal reform, considering that the deeply rooted patriarchal social construct will continue to weaken the protective power of every legislative advancement. Thus, resolving the issue of *silent marital rape* is not merely a legal issue, but a justice project that demands integration between legal reform, institutional transformation, and sustainable socio-cultural change.

<sup>25</sup> Putra, KDH (2023). A REVIEW OF VICTIMOLOGY OF VICTIMS OF DOMESTIC VIOLENCE IN BULELENG REGENCY (Doctoral dissertation, Ganesha University of Education).

<sup>26</sup> Angelita, C. (2022). Legal Study of Domestic Violence Crimes from a Critical Victimology Perspective. *Justitia Journal: Journal of Law and Humanities*, 9(4), 2008-2019.

<sup>27</sup> Waluyo, B. (2011) *Victimology of Victim & Witness Protection*. Jakarta. Sinar Grafika

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