

3-2022

Another Second Chance: Rehabilitation of marital rape offender for the victim's recovery

Iva Kasuma

Universitas Indonesia, ivakasuma@yahoo.com

Farisa Azhara

Faculty of Law, Universitas Indonesia, azharafarisa@gmail.com

Afida Ilfa

Faculty of Law, Universitas Indonesia, afidailfa178@gmail.com

Shofiyah Adila Farhana

Faculty of Law, Universitas Indonesia, sofiafarhana19@gmail.com

Follow this and additional works at: <https://scholarhub.ui.ac.id/ijsls>



Part of the [Law and Gender Commons](#)

Recommended Citation

Kasuma, Iva; Azhara, Farisa; Ilfa, Afida; and Farhana, Shofiyah Adila (2022) "Another Second Chance: Rehabilitation of marital rape offender for the victim's recovery," *The Indonesian Journal of Socio-Legal Studies*: Vol. 1: No. 2, Article 4.

DOI: 10.54828/ijsls.2021v1n2.4

Available at: <https://scholarhub.ui.ac.id/ijsls/vol1/iss2/4>

This Article is brought to you for free and open access by the Faculty of Law at UI Scholars Hub. It has been accepted for inclusion in The Indonesian Journal of Socio-Legal Studies by an authorized editor of UI Scholars Hub.



Another Second Chance:

Rehabilitation of marital rape offender for the victim's recovery

Iva Kasuma¹, Farisa Azhara², Afida Ilfa³, Shofiyah Adila Farhana⁴

¹ Department of Law, Society and Development Faculty of Law Universitas Indonesia,

corresponding author : iva.kasuma81@ui.ac.id

^{2,3,4} Student of Faculty of Law Universitas Indonesia

Abstract

Not all victims of marital rape want divorce, generally victims long to maintain their marriage and for the perpetrators to correct their own behaviors. Victims are also bound to the strong culture that condones sexual relations without consent as long as it is carried out within the framework of a legal marriage. This study aims to demonstrate the importance of rehabilitation for offenders of marital rape by examining various laws and regulations in Indonesia and the obstacles to their implementation. Methodologically, data were obtained from doctrinal studies of Indonesian law and court decisions related to marital rape and empirical studies from a number of law enforcement officers as well as paralegals. The results show that the absence of a specialized law that regulates the rehabilitation of marital rape perpetrators impacts poorly on judges' decisions in domestic violence cases. There has been no court decision sentencing mandatory counselling as part of their rulings. Judges frequently view sexual violence within a limited scope of physical evidence; as a result, perpetrators are granted low sentences. Indonesia needs a specialized law that regulates the rehabilitation of marital rape perpetrators.

Keywords: *marital rape, perpetrator rehabilitation, feminist legal methods*

Abstrak

Tidak semua korban *marital rape* menginginkan perceraian, yang mereka inginkan umumnya pelaku memperbaiki diri dan mempertahankan perkawinan. Korban terdampak kuatnya budaya patriarkhis dan relasi seksual tanpa kesukarelaan sepanjang dilakukan dalam sebuah pernikahan yang dianggap sah. Penelitian ini bertujuan menunjukkan pentingnya rehabilitasi bagi pelaku marital rape dengan mengkaji berbagai peraturan perundang-undangan di Indonesia dan hambatan implementasinya. Secara metodologis, data diperoleh dari kajian doktrinal terhadap hukum Indonesia dan putusan pengadilan terkait *marital rape*, dan kajian empiris terhadap sejumlah aparat hukum, serta pendamping korban. Hasilnya menunjukkan bahwa ketiadaan hukum khusus yang mengatur mekanisme rehabilitasi pelaku *marital rape* berdampak pada putusan hakim yang tidak adil dalam kasus KDRT. Tidak ada putusan pengadilan yang menerapkan pidana tambahan berupa konseling. Pandangan hakim mengenai kekerasan seksual masih sangat terbatas pada bukti fisik, sehingga pelaku dijatuhi hukuman yang rendah. Indonesia membutuhkan hukum khusus yang mengatur rehabilitasi pelaku *marital rape*.

Kata kunci: *pemeriksaan dalam perkawinan, rehabilitasi pelaku, metode hukum feminis*



1. Introduction

Forgiveness is the key to freedom. Victims of domestic violence, including marital rape, do not always want divorce. They would like to reconcile as long as their spouses can stop their abusive behavior (Chris, 2015). In Indonesia, the standard legal definition of marital rape has not been regulated. Meanwhile, as many as 6,480 cases (79%) out of the 8,234 cases handled by the National Commission on Violence against Women (KOMNAS Perempuan) in 2021 occurred within the private realm. Even though Indonesia already has Law No. 23 of 2004 on the Elimination of Domestic Violence (UU PKDRT), rehabilitation for domestic violence perpetrators, as stated in Article 50 letter b, has never been implemented. In the absence of regulation, it becomes a challenge for law enforcement officials to respond to marital rape cases, specifically on how to restore relations between the parties involved. In this case the Sexual Violence Eradication Bill is being proposed in parliament by the government with broad civil society support. However, it has been six years since the process in parliament started and the bill has yet to be passed due to religious politicization from hardline political parties (www.cnnindonesia.com, 2021).

Previous researches on marital rape focused on the protection of women as victims of domestic violence (Harkrisnowo, 2004; Mansur et al, 2007; Rafikah, 2017; Irianto, 2006), emphasizing imprisonment of offenders as the ultimate punishment. In the case of marital rape, perpetrator-victim relationship determines the urgency of sentencing. The more intimate the relationship between parties, the lower the need to punish the perpetrator (Kirkwood and Cecil, 2001). Generally, marital rape cases are reconciled at the police level through penal mediation (Anggraeni and Ardianto, 2020; Rahmah and Arief, 2018), but the process does not guarantee the rehabilitation of the offender. Rehabilitated offenders have a lower likelihood of repeating the same actions compared to offenders who do not receive treatment (Hanson, 2009; Kim et al, 2016; MacKenzie, 2006). The spirit of restorative justice is deeply rooted in rehabilitating offenders, so that they are made to be aware of their actions and implications, and they would be prepared for reintegration into family and community life (Sowe and Akintunde et al, 2019). Criticisms of judges' decisions in cases of domestic violence, among others, are mainly targeted on how judges seem to still be limited to applying the "law in the book" as opposed to the "law in action behind mankind." (Endrawati et al, 2015).

This study focuses on providing a legal analysis of the absence of a marital rape rehabilitation program in Indonesia and the implication of this vacuum. This study



focuses on the trial of marital rape cases, to find out how judges' views of marital rape are reflected in their considerations and verdicts. For instance, whether there has been any breakthroughs through court verdicts. In this case, judges face difficulties due to the absence of relevant legal references in court verdicts. This research offers a new perspective in examining the intersection between women, sexuality, and marriage, with a different spirit from existing laws and regulations.

This study is also based on the argument that the absence of legal instruments regarding the terminology of marital rape as well as the regulation and operationalization of a rehabilitation program for offenders of sexual domestic violence will affect the quality of how law enforcement officers handle such cases. According Erich Folanda, Head of Administrative Section of the Attorney General's Office of the Republic of Indonesia (personal communication, August 30, 2021), law enforcement officers interpret sexual violence in marriage, and the position of women within a narrow moral context, and such an approach will ultimately have implications during the judicial process. There is no guarantee that a forum to resolve these cases will be able to side with women victims while at the same time guaranteeing that the perpetrators will not repeat their actions again. At the court level, decisions in marital rape cases reflect more complex problems, which indicate the need for legal reform. The paradigm of judges in articulating marital rape, opportunities of reconciliation, and victim protection are starting points for much needed improvements (Ramadhan et al, 2018).

2. Method

Data were obtained from various methods: *firstly*, a literature study covering three legal sources consisting of the Indonesian Criminal Code (**KUHP**), Law No.23 of 2004 on the Elimination of Domestic Violence (**UU PKDRT**) and the Sexual Violence Eradication Bill (**RUU PKS**) in context of regulations encompassing marital rape and the rehabilitation of perpetrators. The literature review also includes the success of several countries in implementing and developing rehabilitation programs for offenders of domestic violence, including Japan, the United States of America and Canada.

Secondly, interviews with parties relevant to the legal process, case assistance and policies related to the resolution of marital rape cases and the rehabilitation of perpetrators. Sources include: a judge (1 person), prosecutors (2 people), paralegals (2 people) and a counsellor (1 person) of victims from legal and psychological service institutions, and 1 commissioner of KOMNAS Perempuan.



Thirdly, the examination of court decisions of marital rape cases after the enactment of the Domestic Violence Law. The verdict was obtained through the website of the Supreme Court Rulings Directory, with the term "sexual violence in the household." The search resulted in 24 court verdicts within the period of 2013-2020. A total of 20 decisions were cases of sexual violence committed by biological fathers/stepfathers/male employers/sons-in-law to children/stepchildren/other parties in the household/mothers-in-law. Only 4 decisions are categorized as decisions on marital rape cases. For reasons of privacy, names of the offenders and victims are disguised (pseudonyms). In addition to court decisions on marital rape cases, the study also looks at several decisions in cases of other forms of domestic violence and a divorce case based on an allegation of sexual violence (in the religious court and the private court). The aim is to get a more comprehensive description as well as the judges' rationales when deciding cases of violence against wives.

All data were analyzed using a feminist legal theory approach (FLT), with the main analysis unit being the experience of the women involved (Bartlett, 1990). Scrutinizing the practice of law implementation, including the trial process and judge decision is one of the notions of feminist legal perspective approaches (Irianto, 2020: 45). According to Bartlett (1990) using women's experiences as a basis for building knowledge will open up opportunities for us to see other perspectives that have been marginalized by conventional law. With this method, a critical analysis of court decisions is carried out, encompassing: 1) the identification of all related parties 2) the formulation of the case or main issue in dispute 3) the observation of each party's arguments, including that of law enforcement 4) the observation of the judges' considerations, namely how women are projected by the judges, and whether or not the particular experience of the woman is taken into account 5) whether the judges' decisions can be considered a form of breakthrough that provides justice for the victim or as acts that do further harm the victim by neglecting their experience and reality (Irianto, 2020). In this research, the FLT perspective is used to examine the decisions of judges in marital rape cases that focus on: selecting which articles of law are applicable towards the actions of perpetrators (from the process of case handling with the police to the final court decision), how the judges explore legal facts at trial, as well as aggravating and mitigating factors and final sentencing.

3. Results



3.1 Marital rape within the context of Indonesian law

The legal definition of marital rape varies from one state to another. In general, it is defined as unwanted intercourse or penetration either oral, anal, or vaginal obtained by force or threat of force or when the partner is unable to give consent (Bergen, 1996; Pagelow 1992; Randall and Venkatesh, 2016; Russell 1990). According to the WHO (2009), sexual violence itself is not limited to the location and relationship between the perpetrator and the victim or the presence or absence of coitus. However, in Indonesia there currently is no legal instrument that clearly provides a definition of marital rape. The Criminal Code only regulates acts of rape and sexual intercourse (Articles 285-288).

Tabel 1 Fornication in KUHP (Indonesian Criminal Code)

Pasal 285 KUHP	Pasal 286 KUHP	Pasal 287 KUHP	Pasal 288 KUHP
Any person	Any person	Any person	Any person
who by using force or threat of force	To have sexual intercourse	To have sexual intercourse	To have sexual intercourse
forces a woman out of marriage (not his wife)	with a woman out of marriage (not his wife)	with a woman out of marriage (not his wife)	With his wife
To have sexual intercourse	whom he knows that she is unconscious or helpless	Whom he knows or reasonably should presume that she has not yet reached the age of fifteen years or, if it is not obvious from her age that she is not yet marriageable,	Of whom he knows or reasonable should presume that she is not yet marriageable
shall, being guilty of rape , be punished by a maximum imprisonment of twelve years	Shall be punished by a maximum imprisonment of nine years	Shall be punished by a maximum imprisonment of nine years	Shall, if the act results in bodily harm, be punished by a maximum imprisonment of four years.



Based on the formulation of articles 285-287 of the Criminal Code, it is evident that the formulation of rape recognized by the Criminal Code is limited only to women who are not bound by marriage as stated in the nomenclature of 'women not wives'. Article 288 of the Criminal Code does include protection for married women as victims of rape, but it is limited by the condition that the woman is still a minor. So based on the Criminal Code, forced sexual intercourse is not a crime when the perpetrator does it with a person whom he is married to (wife).

The rape referred to in Article 285-288 by the drafters of the Criminal Code is also limited to “intercourse” which is defined narrowly, namely the penetration of male genitalia into female genitalia, referring to the interpretation of the *Arrest Hooge Raad* dated February 5, 1912 (Soesilo, 1995:2019). Without an expansion of the current definition, this article will become increasingly irrelevant to protect victims of marital rape considering that digital rape or foreign object penetration of body parts other than the vagina such as the anus or mouth, should also be considered rape (Komnas Perempuan, 2018:5). In addition, as the definition of rape is condensed to the very act of sexual intercourse, Article 285 of the Criminal Code only considers it dangerous if it is conducted outside of marriage. The main consideration for danger is the possibility that the woman becomes pregnant which will then have an impact on the child’s uncertain status (Soesilo, 1995). This consideration is much too narrow as a basis for not recognizing the act of marital rape in the Criminal Code (Prodjodikoro, 2010: 118-119).

In response to the legal vacuum for the protection of domestic violence victims, Indonesia then passed the Elimination of Domestic Violence Law on September 22, 2004 as a *lex specialis* of the Criminal Code. It is stated in Article 8 of the Elimination of Domestic Violence Law that sexual violence is coercion of sexual relations carried out against people who live within the scope of the household. This shows that the formulation of the Elimination of Domestic Violence Law narrows down the definition of sexual violence to the phrase 'forced sexual intercourse.' However, there is no further explanation as to whether the forced sexual intercourse was then limited to coerced coitus only or could be interpreted broadly to include all forms of sexual violence that lead to penetration - whether through intercourse or not. It remains unexplained when the element of coercion is deemed to have been fulfilled. As for Article 46 of the Elimination of Domestic Violence Law, the punishment for offenders of sexual violence within the household is a maximum of 12 years in prison or a maximum fine of Rp. 36,000,000.00 (equals to USD 2500).



Indonesian feminist activists have pushed for legal reforms to grant maximum protection for victims of sexual violence, including marital rape through the Sexual Violence Eradication Bill which was initiated in 2016. By definition, marital rape is said to be part of the 9 types of sexual violence regulated by the bill, specifically sexual violence that occurs within the realm of personal relationships (Article 11 paragraphs (1), (2), and (3)). The progressive content of the Sexual Violence Eradication Bill is also reflected in the redefinition of rape. Article 16 of the Sexual Violence Eradication Bill states that rape is sexual violence in the form of coercion, threats of violence, deception, or taking advantage of the condition of a person who is unable to give real consent to have sexual intercourse. Based on the different regulations regarding rape and sexual intercourse, in Indonesia there are three legal perspectives of penal policy related to marital rape: the Criminal Code (KUHP) the Elimination of Domestic Violence Law and the Sexual Violence Eradication Bill.

Tabel 2 Formulation of marital rape within Indonesian Law

CRIMINAL CODE	THE DOMESTIC VIOLENCE LAW	SEXUAL VIOLENCE ERADICATION BILL
Does not acknowledge the existence of rape within the scope of marriage	Recognizes the possibility of sexual violence within the household	Recognizes marital rape as one of the nine types of sexual violence
Rape is limited to sexual intercourse (the penetration of male genitalia into the female genitalia)	The sexual violence in question only encompasses forced sexual intercourse	Recognizes rape within the personal and domestic realms
Rape is interpreted within the limited relations between men and unmarried women	No further explanation on what constitutes forced sexual intercourse	Recognizes the possibility that the victim may not be able to consent to sexual intercourse
		What constitutes rape is not explained in detail

3.2 Court decisions of marital rape

According to the feminist view, all marital rape cases must be refer to the courts to have a greater impact on the protection and legal certainty for victims. Through court,



the violent act of the perpetrator is validated as a crime that has harmed the victim. So far, due to misperceptions and myths about sexual roles among officials, families and communities the experiences of victims are often ignored (Sonkin, 1987). Families as well as society ask women (wives) to give in, understand, and endure. *“In Papua, for example, some feminist activists shared that violence against women in the family is common, so it is just accepted as a fact of life.”* (Poerwandari, 2005: 327). This cultural oppression is one of the reasons why few victims of marital rape report the violence they have experienced. This condition was noted by the Committee on the Elimination of Discrimination against Women at the United Nations at its 52nd meeting (2012). The Committee considers that the effectiveness of the Domestic Violence Law in Indonesia must still be considered very low. This is because, after the Domestic Violence Law was enacted, there was no increase in the reporting of marital rape cases (CEDAW/C/IDN/CO/6-7 Section C N.25 point (d)).

The four court rulings on marital rape cases studied in this paper illustrate the complexity of how ambiguous rules regarding marital rape are mixed with the traditional paradigm of judges who still interpret rape in a narrow sense, resulting in inconsistent decisions. The following is a summary of each of these decisions:

Case 1. Sugeng and Gina (Court Ruling No. 210/Pid.B/2012/PN-IDI)

On June 2, 2012, triggered by a pornographic film he was watching, Sugeng forced Gina, his wife who had just been in labor 12 days prior, to anal sex. Sugeng also forced Gina to watch porn when he did the stunt. When having sex before the incident, Sugeng had several times forcibly inserted an eggplant into Gina's vagina. In addition, Sugeng taped his penis before penetration through the anus. As a result, Gina contracted an infection and experienced bleeding. The visum results showed that there was an abnormality in Gina's anal canal (an anal fistula), and she had to undergo surgery.

The Public Prosecutor pressed Sugeng with alternative charges through Article 46 of the Elimination of Domestic Violence Law (sexual violence) or Article 44 paragraph (1) of the Elimination of Domestic Violence Law (physical violence) with a sentence of 3 years imprisonment. The panel of judges sentenced Sugeng for committing sexual violence and was sentenced to 1 year in prison. The judges noted the aggravating factor that as a husband, Sugeng should have maintained the safety of Gina, his wife. The Public Prosecutor appealed; however, the High Court ultimately did not change the length of punishment.



Case 2. Karto and Ani (Court Ruling No. 126/Pid.Sus/2015/PNPbg)

While Ani was taking a bath, Karto strangled Ani's neck with his right hand, then inserted four fingers of his left hand into Ani's vagina until bleeding occurred. This is the second time that Ani had refused to have sex with Karto. The victim refused because Karto had divorced the victim three times prior and left the victim for thirteen months without even a goodbye.

For his actions, Karto was sentenced to seven months in prison by a judge for the criminal act of domestic sexual violence against his wife based on Article 46 of the Elimination of Domestic Violence Law. Within the judges' consideration, an aggravating factor was that Karto's actions as a husband resulted in his wife suffering serious injuries to her genitals. On the other hand, Karto's confession and his polite behavior during trial was considered a mitigating factor. The main factor that ultimately eased his sentence was that Karto, Ani and her extended family had already reconciled.

The judges also considered that the objective of the final sentencing should not solely be based on retribution, but also provide an opportunity for the offender to correct his behavior and not repeat his actions before finally reintegrating back to the community. The judges' considerations must be perceived within the context of general prevention.

Case 3. Lepi and Mirna (Court Ruling No. 150/Pid.Sus/2017/PN.Bkl)

After previously being unofficially married and living together for almost eight years before divorcing, in March 2016 Lepi and Mirna decided to remarry. After remarrying, Lepi and Mirna did not live together in the same house. Mirna often stays at her parents' house. For almost a year after they remarried, Lepi and Mirna never had sex because Lepi had an erectile dysfunction. On February 12, 2017, towards the end of the night after taking a bath, Lepi entered the room and Mirna was sitting on the edge of the bed. Mirna then pulled on Lepi's clothes to invite Lepi to have sex, but Lepi refused and left the room. It turned out that Lepi took an eggplant (sized 8 cm) from the yard and tucked it under his shirt. He returned to the room, and Mirna was still there. Then Lepi pushed Mirna on her back, took off Mirna's clothes and tied her hands in front of her. After that, Lepi took off his sarong and underwear and pointed his penis into Mirna's mouth, but Mirna refused to give him oral sex. Lepi became annoyed, pulled Mirna's sarong and panties, and positioned himself on top of Mirna's vagina. Lepi then took the eggplant he had brought earlier and forced it into Mirna's vagina repeatedly. Lepi didn't



care that Mirna was in pain and was not able to move. After two minutes of penetration using the eggplant, Lepi left Mirna with the eggplant still in her vagina.

Lepi was charged by the Public Prosecutor with Article 46 in conjunction with Article 8 letter a of the Elimination of Domestic Violence Law with an estimated prison term of one year and six months. When considering its decision, the panel of Judges stated that there were no justifications that could excuse the actions of the Defendant. An aggravating factor that the judges noted was the Defendant's status as a legal husband who is obliged to protect his wife. However, because the Defendant confessed and stated that he was apologetic, the judge reduced the Defendant's sentence to one year in prison.

Similar to the case of Karto and Ani, the judges of Lepi and Mirna's case also noted that the sentencing "... was not merely an act of retribution but should instead be considered as an opportunity for the defendant to improve his character and society."

From the results of Lepi's examination at court, several facts were stated, including:

- that the Defendant did not feel anything when he inserted the eggplant into Mirna
- that the Defendant did not see any blood on the eggplant
- that the Defendant did not lubricate the eggplant

(p.9, Court Ruling No. 150/Pid.Sus/2017/PN.Bkl)

Such facts surfaced from questions such as "After you inserted the eggplant into the victim's vagina, did the victim's vagina bleed?" and "Before you inserted the eggplant into the victim's vagina, did you apply lubricant?" The answers that surfaced during the trial ultimately resulted in a court sentence that was six months lower than the Prosecutor's indictment.

Case 4. Eri and Noni (Court Ruling No.245/Pid.Sus/2017/PN Tte)

In 2014, Noni found evidence that Eri had sent money to his ex-girlfriend without her knowledge. Since then, Noni refused Eri's requests for sex and, as a consequence, they separated. On May 13, 2017, while Noni was washing the dishes, Eri approached her and hugged her tightly from behind. Noni resisted and brushed it off saying that she was fasting. Eri ignored her and continued to hug her tightly while dragging Noni into the room and slamming Noni on the bed. Then Eri forced open Noni's negligee until it was torn, squeezed both of Noni's breasts roughly and bit her right breast. Eri then forcibly opened Noni's thighs and drove two fingers of his right hand into Noni's vagina. Noni



tried hard to resist and begged Eri to stop as Noni felt the pain in her vagina and breasts. Her vagina was bleeding, and she felt the pain all over her body. According to the visum, there were bruises on Noni's breast and abrasions on her vagina.

The prosecutor pressed Eri with alternative charges, firstly: Article 47 of the Elimination of Domestic Violence Law (forcing sexual relations for commercial purposes and/or certain purposes with a minimum prison sentence of four years and a maximum of 15 years) or secondly: Article 46 of the Elimination of Domestic Violence Law or thirdly: Article 44 paragraph (1) of the Elimination Domestic Violence Law or finally: Article 44 paragraph (4) of the Elimination Domestic Violence Law. The differences between paragraph (1) and paragraph (4) of Article 44 of the Elimination Domestic Violence Law include the different qualifications for the acts of physical violence as well as the punishment they entail. Paragraph (1) stipulates that physical violence perpetrated within the household generally carries a maximum imprisonment of five years and a maximum fine of Rp. 15 million. Paragraph (4) specifically regulates physical violence perpetrated by a husband against his wife or vice versa without causing illness or harm that interferes with their daily lives. This act has a maximum penalty of four months and a maximum fine of Rp. 5 million. The judge finally sentenced Eri to three months in prison with a fourth month probation for committing physical violence that did not interfere with the victim's ability to conduct daily activities.

The judges' considerations include:

"In Indonesia's criminal legal system, one of its goals is special prevention (*Special Preventive*) which aims to foster and educate the offender so as to not repeat his actions and also to provide opportunities to improve himself in his life, community, and nation. Considering that this goal is the most urgent and crucial, then in imposing a sentence on the Defendant, this panel of Judges is of the opinion that the application of a probationary sanction should absolutely be considered."

(p.15 Court Ruling No.245/Pid.Sus/2017/PN Tte)

Based on the judges' arguments, they considered the need to provide an opportunity for the offender to improve without having to isolate him from his family and society. The judge also considered the severity and gravity of the perpetrator's guilt. Noni's post-mortem results were one of the main references used by the judges to classify Eri's actions as 'light.' Although it was stated that there were bruises on Noni's chest and abrasions on her vagina, the doctor concluded that these conditions did not cause further illness or impediment to her daily life. According to the judges, an aggravating



factor of Eri's final sentencing is the trauma that he has caused. On the other hand, mitigating factors include information that Eri has no prior criminal charges and that Eri regrets his actions.

Table 3 Verdicts of Marital Rape Cases

NO.	CASE/COURT RULING NUMBER	SENTENCE	JUDGES' CONSIDERATIONS
1.	Case 1. Sugeng and Gina (Court Ruling No. 210/Pid.B/2012/PN-IDI)	1(one) year imprisonment	Aggravating factor: The defendant committed a crime against his own wife whose safety he should have been responsible for.
2.	Case 2. Karto and Ani (Court Ruling No. 126/Pid.Sus/2015/PNPbg)	7 (seven) months imprisonment	Aggravating factor: The defendant's actions resulted in injury to his wife's genitals Mitigating factors: <ul style="list-style-type: none">- The defendant confessed his wrongdoing so as to not complicate the trial;- The defendant was polite during the trial;- The defendant has reconciled with his wife and family.
3.	Case 3. Lepi and Mirna (Court Ruling No. 150/Pid.Sus/2017/PN.Bk l)	1(one) year imprisonment	Aggravating factors: As a husband, the defendant should have protected his wife but had caused harm to her instead Mitigating factors: <ul style="list-style-type: none">- The defendant does not have prior convictions- The defendant behaved politely and confessed his actions- The defendant expressed



			regret and promised to not repeat his actions
4	Case 4. Eri and Noni (Putusan No.245/Pid.Sus/2017/PN Tte)	3 (three) months imprisonment with 4 (four) months probation for committing Physical Violence within the Household (Article 44 paragraph (4) of the Domestic Violence Law)	Aggravating factors: The defendant's actions caused trauma to the victim Mitigating factors: <ul style="list-style-type: none"> - The defendant does not have prior convictions - The defendant expressed regret

3.3 The Significance of Rehabilitation for Perpetrators of Marital Rape

The basic criminal punishment does not solve the fundamental issues of sexual violence, especially within the household, namely problems in their behavior and grasp of acceptable norms

(Uli Pangaribuan, LBH APIK, conveyed via personal communication, August 14, 2021).

According to Article 50 letter b of the Elimination of Domestic Violence Law, judges are given the authority to deliver additional penalties such as orders to participate in counselling programs under the supervision of certain institutions. "Certain institutions" are institutions that have been accredited to provide counselling services for perpetrators of domestic violence, such as hospitals, clinics, or counseling services with a certain counselling period. It is also stated in the article that the judges have the freedom to impose a probationary sentence. The aim is to provide an opportunity for the parties (especially the perpetrators) to return to work to maintain the integrity of their household, through a rehabilitation program. Raynor and Robinson (2009) mention the elements of rehabilitation which include (1) actions that (2) restore (3) improve (4) and help those in need to conform to 'normal' standards, through (5) some form of third-party intervention.

Rehabilitation means improving the personality and behavior of convicted offenders through education and/or well-established therapeutic treatment to ensure that individuals return to society as whole, independent, and acceptable members of society. Rehabilitation as a form of punishment is intended to shape the future behavior of the



convict. This is explained by Packer as quoted by Dambazau (2007) in *The Nigerian Police and Crime Prevention: Criminology and Criminal Justice*. In particular, rehabilitation programs can encourage perpetrators to:

- realize that his actions violated the law
- empathize with survivors and truly regret their actions
- develop respect for women and others
- control themselves from committing acts of violence, as well as reintegration

back into the family environment

Adrine, the presiding judge of the Cleveland Municipal Court, in an interview regarding the challenges of differentiating among domestic violence offenders (www.courtinnovation.org n.d) stated that the rehabilitation program needs to consider several conditions, namely:

It's only those cases where there's no prior history of violence, there is no history of emotional battering that we're able to determine. There is no history of, of severe problems in the individual's background, because all of those things are done by the probation department at the final check to make sure that we've got people who are unlikely to engage in the kind of conduct moving forward.

Fersch (1975) stated that imposing certain limits on who qualifies for rehabilitation program to certain types of offenders and their corresponding actions will be able to support the ideal reconciliation process between the parties. It is very unfortunate if Article 50 letter b of the Elimination of Domestic Violence Law which embodies the spirit and requirements of reconciliation for husband and wife is not implemented. According to Dian Novita, legal counsellor from LBH APIK, judges have never before utilized this article as an additional penalty against perpetrators of sexual violence in the household (Personal communication, August 5, 2021). This statement confirms the data of court rulings regarding domestic sexual violence between the period 2013 to 2021, which is available on the website of the Indonesian Supreme Court Ruling Directory.

According to Ramon Wahyudi, Depok District Court Judge, such underutilization of the rehabilitation clause for perpetrators of sexual violence in Indonesia is driven by the lack of clarity on the institutional instruments that should carry out special trainings. Furthermore, it did not specify what supervisory agency should be responsible for monitoring the implementation of the special counselling after an additional criminal verdict has been handed down by the judges (personal communication, 28 August 2021).



So far, rehabilitation institutions in Indonesia, such as Pulih Foundation, have never received a referral from the court to counsel perpetrators of marital rape or domestic sexual violence in general. (Wawan Suwandi, Pulih Foundation, personal communication, 29 August 2021). Regulations that provide clarity about what institutions are legally authorized to provide counselling to convicts of sexual violence are needed to synchronize and legitimize the duties and functions of each institution throughout the process.

Irene Putrie, prosecutor at the Indonesian Attorney General's Office (personal communication, September 1, 2021) explained that although Article 50 letter b of the Domestic Violence Law states that judges can impose additional penalties, this does not mean that prosecutors have not the mandate to press for such additional penalties in their indictments. Thus, there are at least two reasons why Article 50 letter b of the Domestic Violence Law is rarely utilized by prosecutors:

1. The lack of relevant institutions to handle cases of sexual violence against wives. This is because domestic sexual violence is viewed differently from sexual violence against children, or other special crimes such as corruption where the appointed prosecutor has been specifically certified. So far, domestic sexual violence is still classified as a general crime that is included in the domestic scope, so it is possible that the prosecutor who handles such cases is not very familiar with the intricacies of domestic sexual violence; and
2. The existing inherent paradigm among law enforcement officers that the only sanctions that can be imposed are imprisonment or fines.

Therefore, based on these two findings, it is important to educate law enforcement officers on case handling of domestic sexual violence, specifically those against wives and especially marital rape.

As a comparison, Japan requires the implementation of rehabilitation programs that are based on a risk assessment test to prevent recidivism. Rehabilitation is carried out in correctional facilities and is designed based on cognitive-behavioral therapy in which each participating inmate is placed under a therapy category with different levels of intensity according to their abilities and/or the degree of possible recidivism (UN Women, 2006). Such cognitive behavioral therapy is considered successful in preventing recidivism among sexual violence perpetrators (Nomura, 2011). Meanwhile, in Canada, the rehabilitation of perpetrators is carried out in prisons with professionals from non-



governmental organizations/organizations, namely Circles of Support and Accountability (CoSA). CoSA is supervised and managed by The Correctional Service of Canada (Correctional Service Canada, n.d), which is the government agency responsible for managing rehabilitation institutions and supervising offenders under parole in the community. The results of the CoSA evaluation showed that participation in the rehabilitation program has so far succeeded to reduce the recidivism rate of sexual violence cases up to 70% (Sowden and Olver, 2017).

The Rehabilitation of Marital Rape Offenders in the Sexual Violence Eradication Bill

The prevailing legal politics on sexual violence in Indonesia is currently still focused on punishing perpetrators instead of providing protection, fulfilling victims' best interests, facilitating behavioral change for perpetrators, and ultimately reintegrating them in society (Rahayu 2018). According to Blagder and Winder (2019), several factors that cause people to commit acts of sexual violence include social and emotional isolation, emotional immaturity, and general problems related to intrapersonal relationships. In the context of domestic violence, especially in the case of marital rape, it cannot be separated from the culture of dominance and punishment of women by the community and the control that men have over women (Corvo and Johnson, 2003). Another cause is the misperception of a husband's power over his wife, including in determining how sexual relations are carried out. The strongly believed myth of a patriarchal society is that the position of the husband is higher than the wife or even that women are considered as servants and properties of their husband (Poerwandari, 2005: 324).

Therefore, the paradigm of retributive justice should shift to restorative justice. This will benefit all parties involved, including the husband and wife as well as the wider community. Rehabilitation programs provided to perpetrators must be able to change the patriarchal perspective that dominates the trigger behind marital rape. The Sexual Violence Eradication Bill contained progressive elaborations on the implementation of rehabilitation theory through draft provisions regarding special counselling in Article 90. The forms of additional penalties that can be given to perpetrators include:

1. Treatment under a psychologist and/or psychiatrist;
2. Legal awareness education;
3. General intellectual education;
4. Attitude and behavior change;



5. Physical and mental health care; and
6. Reintegration of non-sexually violent behaviors.

The substance of the draft article regarding additional penalties involves at least three rehabilitative aspects which include psychological, legal and social elements. Especially for changes in attitudes and behavior, the initial prerequisite is the perpetrator's awareness that what has been done to his wife is a mistake and that before the law it is a crime.

4. Discussion (Between normal and moral: the inadequacy in perceiving the female body, sexuality, and marriage)

The punishment for the perpetrators in the four cases above is relatively short, namely imprisonment for one year or less. In Article 46 *jo.* Article 8 of the Elimination of Domestic Violence Law states that sexual violence in the household is punishable by a maximum imprisonment of 12 years or a maximum fine of Rp. 36,000,000 (USD 2500). The period of sentencing was imposed by a panel of judges by considering several things: first, aggravating factors and mitigating factors. Mitigating factors include the parties' desire to reconcile, for example in Decision Case 2 (Karto-Ani). In this decision, the panel of judges sentenced the defendant to imprisonment for seven months with the consideration that the husband as the perpetrator had reconciled with the wife as the victim, and the victim's family. The perpetrators' remorse was also considered by the judge as a factor reduce their sentences, as in Case 3 (Lepi-Mirna) and Case 4 (Eri-Noni).

Second, the judges' view that rape has occurred only if there was penetration of the penis into the vagina. Outside of that context, if the physical violence does not led to coitus or when another object is used to penetrate the vagina, then the act is not considered as rape. This view is also held by the Prosecutor when determining the indictment. As seen from Case 4 (Eri-Noni), instead of seeing the act of violence as a full-blown sexual assault, the prosecutor utilized alternative charges of sexual violence or mere physical violence. At the end, the judges sentenced Eri for committing physical violence. In their consideration, the judges chose to take the defendant's statement as sole fact. When in fact, the defendant's account of the chronological events differed from the testimonies of both the victim and other witnesses, as well as medical evidence. According to Noni, Eri had squeezed and bit her breasts and penetrated Noni's vagina with two fingers. The witnesses and the visum also confirmed that there were traces of such injuries. However, at the conclusion of the trial evidence, the judge only included Eri's description of what happened to Noni: he kissed her breasts and stroke her vagina.



Third, according Ramon Wahyudi, Depok District Court Judge (personal communication, August 28, 2021), the judge decided to grant a probationary sentence for the perpetrator of marital rape within the context of prevention, be it general or specific. The integrity of the family is one of judges' main concerns when presiding over a case of marital rape. The judges' considerations are rooted in the mandate of Article 4 of the Elimination of Domestic Violence Law which is to take action against perpetrators of domestic violence (letter c) and maintain the integrity of a harmonious and prosperous household (letter b). Regardless of the physical and psychological suffering experienced by the wife, the judges still provided an opportunity for the husbands to improve themselves and not repeat their actions. The tendency of law enforcement agencies to reconcile the parties in domestic violence cases can be observed from the many mediation forums initiated by the police, as well as judges' decisions that release and absolve perpetrators without the need for detention. Their considerations are based on the parties' agreement to reconcile, continue their marriage, raise their children together without wanting to divorce.

Victims' trauma were not the judges' main concern when conducting a comprehensive assessment of the acute and long-term impact of sexual violence towards the victim's life. According to de Araujo Moraes et al (2012), women who experience sexual violence both under verbal threats and physical violence often end up "giving up" and surrender to the unwanted whims of others. Women victims then experience disorientation with their own bodies and minds. Consent for unwanted sexual activity can be (forcibly) given on the grounds of satisfying the partner's needs, increasing intimacy in a relationship, avoiding the partner's rejection and avoiding tension in the relationship with the partner (Impett and Peplau, 2002). In the end, the cycle of violence will continue. Evidence of physical violence still takes precedence with priority given to the results of the *visum et repertum*. The absence of evidence for psychological violence supported by a *visum et repertum psikiatricum* and as the reported act of violence was within the narrow scope of sexual violence, the judges tend to deny the trauma of the victims.

The judges' method of digging up facts during the trial of marital rape often erases traces of actual violence. The judges' demands to seek material truth shapes the trial into a mechanistic process, not taking into account the feelings and traumatic experiences of the victim. For example, in Case 3 (Lepi and Mirna), the court fact notes stated that Lepi did not apply oil (which was intended as a lubricant) to the eggplant that was inserted into Mirna's vagina. The very note of this fact illustrates how the judges failed to understand



the fundamentals of sexual violence. Would using a lubricant induce his wife to enjoy the act? The judges objectified women's bodies by considering them to be mere sexual objects in which the husband has the right over his wife's body be it in pain, physically hurt, or penetrated by objects (MacKinnon 1987: 176). The courtroom further victimized the victim (secondary victimization).

When wives report cases of violence that they have experienced as a crime, what they really want is deterrence without denying the opportunity of improvement for the perpetrators (their husbands). They want the pain and injury that they experienced from their husbands to be legally recognized as a result of crime (Zinsstag et al, 2018: 11). This motivation can be understood when we look at wives who instead chose to file for a divorce from their husbands on grounds of marital rape. Unfortunately, it is not uncommon for them to be disappointed when the judges reject the grounds of their lawsuit. The considerations that are most often put forward by judges include how divorce will “destabilize the throne of God” (*istazza asrur rahman*), and that their household does not classify as a “broken marriage” (Court Ruling No. 1535/Pdt.G/2015/PA Mks). Although the wife had repeatedly been the victim of various acts of violence by her husband, freeing herself from him was not easy. The judges in the religious courts allowed the opportunity for improvement by rejecting the divorce suit while the criminal court did the same by only giving the perpetrator a probationary sentence. It is very unfortunate that so far Article 50 letter b of the Domestic Violence Law, which mandates the requirements and the very spirit of reconciliation through rehabilitation, is not utilized, especially coupled with the fact that perpetrators of sexual violence within the household have a high probability to repeat their crimes (Nahei, Commissioner of Komnas Perempuan, personal communication July 27, 2021).

The intention to provide a second chance for perpetrators of marital rape also needs to consider what was criticized by Fersch (1975) regarding the punishment and rehabilitation of perpetrators.

“...the aims of punishment and rehabilitation are at odds with each other, unless one accepts the faulty proposition that punishment is itself the primary form of rehabilitation. An institution, therefore, cannot simultaneously punish and rehabilitate.”

Based on Fersch's views, Article 50 of the Elimination of Domestic Violence Law actually provides the opportunity to bridge the principal conflict between punishment and rehabilitation, namely by giving judges the flexibility to impose probationary sentences.



Validation of crimes, facilitation of reconciliation: the Sexual Violence Eradication Bill's Comprehensive offer to restore victims' rights and raise offenders' awareness

Articles 87 and 90 of the Sexual Violence Eradication Bill mandate that the perpetrators be given special counselling as an additional penalty which includes professional psychological care up to reintegration. In 2020, the Sexual Violence Eradication Bill was even (temporarily) removed from the 2020 National Legislation Program (Prolegnas). A number of the members from the People's House of Representatives (DPR) were of the opinion that the Bill contravenes the national spirit of Pancasila, general Eastern culture and religious values. Some members of the DPR showed distorted perceptions about marital rape itself. The rationale behind the rejection of the provisions for marital rape is the assumption that it is the duty of a wife to serve her husband sexually. In addition, the refusal also illustrates how few people understand the true definition of rape, that without the consent of both parties, any form sexual relations should be considered an act of rape.

In addition to the issue marital rape as a concept, several parties have also disputed the title of the Sexual Violence Eradication Bill which uses the term "eradication." The use of this term is considered problematic on the grounds that the title will affect the meaning so that it is necessary to change the title from the Sexual Violence Eradication Bill to the Sexual Violence Bill (RUU TPKS). The changes in the new Sexual Violence Bill concern core elements of the victims' interests such as recovery, protection, and access to justice, as various related articles have been removed (CNN Indonesia, 2021). In the Sexual Violence Bill, protection for victims is only mentioned in Article 1 number 12, without further explanation about the type of case handling, victim recovery, and protection in question.

Meanwhile, there are no provisions regarding the forms of rehabilitation for perpetrators of sexual violence in the household in the new Sexual Violence Bill. Special guidance is only briefly mentioned in Article 8 without further explanation. In addition, Article 9 of the Sexual Violence Bill stipulates very narrowly that the rehabilitation of perpetrators is only limited to perpetrators of sexual harassment and convicted children under the age of 18. The implication is that it is still unclear whether it is possible for judges to sentence perpetrators of marital rape to participate in rehabilitation. The Sexual Violence Bill reopens the legal uncertainty by not explaining further the scope and application of special counselling.



As of February 2022, the discussion regarding the Sexual Violence Bill being held by Parliament has reached consensus as one of the prioritized bills to be legalized (the House of Representatives of the Republic of Indonesia, 2022). Further discussions with the President and the ministerial ranks are needed before reaching the final agenda and signing the bill as stated on Article 128 the House of Representatives of the Republic of Indonesia Decree Number: 15/DPR RI/I/2004-2005 of Rules and Regulations of the House of Representatives of the Republic of Indonesia. Therefore, there is still a chance to include rehabilitation programs for perpetrators of sexual violence and marital rape that were previously covered in the Sexual Violence Eradication Bill.

Reflecting on the judges' decisions on marital rape cases and the dynamics behind the Sexual Violence Bill, it is evident that issues of sexuality, women's bodily autonomy and marriage are still very much in the vortex of men's power. Sexual violence experienced by women is always attached to the issue of morality. The judges' decisions are still being formulated based on facts and considerations that do not accommodate the interests of women victims, negating the victims' traumatic experiences. Judges need to act progressively to ensure that perpetrators of marital rape do not become recidivists. One thing that can be done is to encourage the immediate issuance of implementing regulations regarding the rehabilitation program. Another important thing is to make the courtroom a place where victims are able to voice their experiences and strengthen victims (Irianto, 2020). Judges need to better interpret and guide the values contained in the Regulation of the Supreme Court of Indonesia No. 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in the Face of Law. Judicial decisions in cases involving women are currently still dominated by male norms, evident in the prioritization of equality (equal treatment) over appropriate affirmation for women by taking into account non-legal factors (Sarasawati, 2020).

The challenge for judges is to ensure that the offender really has a transformed understanding of his abusive behavior. Specifically for law enforcement authorities, an understanding should be established that marital rape is not a myth. Reconstruction of knowledge and paradigms in viewing sexuality, sexual violence and marriage are prerequisites for producing proper and fair court decisions. The aim is to encourage law enforcement officials to make breakthroughs in the midst of a legal vacuum. Regarding the institution to enforce rehabilitation for marital rape perpetrators, we endorse Correctional Institution (Lembaga Pemasyarakatan) with professionals from non-



governmental organizations that provide correctional psychological service, as is done in Canada's and Japan's correctional institutions.

5. Conclusion

In Indonesia, sexuality in general is still very narrowly defined, only within the boundaries of sexual intercourse. If it takes place within a legal marriage, a sexual relationship consensual or not, will be considered normal and ideal. These conditions contribute to how marital rape cases are resolved through legal channels. After 17 years, the philosophy of the Elimination of Domestic Violence Law to maintain the integrity of a harmonious and prosperous household has not yet taken hold. The absence of regulations regarding marital rape results in court decisions of marital rape that fail to provide maximum protection for victims. Judges' considerations are still based on factors and interests other than the needs and conditions of women/wives as victims. The understanding of law enforcement officers regarding restorative justice in cases of domestic violence is still limited to reconciliation, but it does not have an impact on the recovery of those involved and the general improvement of legal awareness in the community that can be achieved through rehabilitation programs for offenders.

This study of the lack of rehabilitation programs for marital rape offenders based on an analysis of court decisions contributes to our comprehension how marital rape cases are resolved in Indonesia's legal system. The problems that occurred during the trials of marital rape cases can then be used as input for further regulatory reforms. In this context, the Sexual Violence Bill, which is currently being debated on, should regulate the implementation of rehabilitation programs for perpetrators of sexual violence.

The existence of a rehabilitation program as mandated by the Domestic Violence Law is urgent. Its pivotal role will not only facilitate the reconciliation spirit endorsed by the legal enforcers in resolving domestic cases but will also validate women's victim's experiences.

Author Contributions: All the authors collaboratively conceived the present study in the following roles: Conceptualization, IK, FA, AI, SAF ; methodology, IK ; writing—original draft preparation, IK, FA, AI, SAF; writing—review and editing; IK, FA, AI, SAF. All authors have read and agreed to the published version of the manuscript.



REFERENCES

- Anggraeni, Anggia Putri and Hendra Try Ardianto. 2020. “Bagaimana Polisi Menangani Kasus Kekerasan dalam Rumah Tangga (KDRT): Studi Kasus Polrestabes Semarang.” *International Journal of Demos* 2 (3): 258-270. <http://hk-publishing.id/ijd-demos>
- Correctional Service Canada. n.d. “Acts, Regulations and Policy”, <https://www.csc-scc.gc.ca/acts-and-regulations/index-en.shtml> web. September 3, 2021.
- CNN Indonesia. 2021. *KOMPAKS: RUU PKS Ganti Nama Jadi TPKS, 85 Pasal Hilang*. <https://www.cnnindonesia.com/nasional/20210903131110-32-689315/kompaks-ruu-pks-ganti-nama-jadi-tpks-85-pasal-hilang>
- Endrawati, Lucky et al. 2015. “Rekonstruksi Model Putusan Hakim Perkara KDRT Melalui Pendekatan Hukum Progresif.” *Jurnal Media Hukum* 22 (1). DOI: [10.18196/jmh.2015.0048.73-94](https://doi.org/10.18196/jmh.2015.0048.73-94)
- Eskawati, Maria Yeny and Yulian Endarto. 2017. Penyebab Kekerasan Dalam Rumah Tangga (KDRT) di Kecamatan Bantul Kabupaten Bantul Yogyakarta. *Visikes Jurnal Kesehatan Masyarakat* 16 (1): 59-65. DOI: <https://doi.org/10.33633/visikes.v16i1.1860>
- Felser, Zlatka Rakovec-.2014. “Domestic Violence and Abuse in Intimate Relationship from Public Health Perspective.” *Health Psychology Research* 2 (3): 1821. doi: [10.4081/hpr.2014.1821](https://doi.org/10.4081/hpr.2014.1821)
- Fersch, Ellsworth. 1975. “When to Punish, When to Rehabilitate.” *American Bar Association Journal* 61 (10): 1235-1237. <https://www.jstor.org/stable/25727363>
- Harkrisnowo, H. 2004. “Domestic Violence (Kekerasan Dalam Rumah Tangga) Dalam Perspektif Kriminologi dan Yuridis.” *Indonesian Journal of International Law* 1(4): 709–734. <https://doi.org/10.17304/ijil.vol1.4.563>
- H. J. Kenedi. 2017. *Kebijakan Hukum Pidana Penal Policy dalam Sistem Penegakan Hukum di Indonesia*, 59. Bengkulu: IAIN Bengkulu Press.
- Hollin, C.R. E.J. Palmer, dan R. M. Hatcher. 2013. “Efficacy of Correctional Cognitive Skills Programmes” in *What Works In Offender Rehabilitation: An Evidence-Based Approach To Assessment And Treatment*. New York: Wiley-Blackwell.
- Huff, S dan D. L. Rappleyea. 2020. “Understanding and Responding to Victims of Interpersonal Sexual Violence and Sexual Assault within Committed Relationships.” *The American Journal of Family Therapy* : 107-125.
- Impett, Emily A and Letitia Anne Peplau. 2002. "Why Some Women Consent to Unwanted Sex With A Dating Partner : Insight From Attachment Theory." *Psychology of Women Quarterly* 26: 360-370.
- Indonesia National Commission on Violence Against Women. 2018. *15 Bentuk Kekerasan Seksual Sebuah Pengenalan*. Jakarta: Komisi Nasional Anti Kekerasan terhadap Perempuan.
- Irianto, Sulistyowati. 2006. *Perempuan dan Hukum : Menuju Hukum Yang Berperspektif Kesetaraan dan Keadilan*. Jakarta: Yayasan Obor Indonesia.



- _____ and Lidwina Inge N (ed). 2020. “Teori Hukum Feminis” dalam *Perempuan dan Anak dalam Hukum dan Persidangan*, 41-66. Jakarta: Yayasan Pustaka Obor Indonesia.
- Jones, Ashley C. T. and Tess M. S. Neal. 2018. “A Call for Research on Sex Offender Treatment Programs.” *International Journal of Offender Therapy and Comparative Criminology* 63 (1): 79.
- Kim, Bitna., Peter J Benekos., Alida V. Merlo. 2015. Sex Offender Recidivism Revisited: Review of Recent Meta-analyses on the Effect of Sex Offender Treatment <https://doi.org/10.1177/1524838014566719>
- Kirkwood, Mary Kay and Dawn K Cecil. 2001. “Marital Rape.” *Violence Against Women* 7 (11): 1234-1253.
- Krug, EG., Linda L Dahlberg LL, James A Mercy, et al. 2002. The Word report on violence and health. *The Lancet* 360 (9339): 1083-1088. [https://doi.org/10.1016/S0140-6736\(02\)11133-0](https://doi.org/10.1016/S0140-6736(02)11133-0)
- MacKinnon, Catharine. 1987. *Feminism Unmodified*. Cambridge, Massachusetts and London, England: Harvard University Press.
- Mansur, D., Arief, M., & Gultom, E. 2007. Urgensi Perlindungan Korban Kejahatan: Antara Norma dan Realita. Jakarta: Raja Grafindo Persada.
- Martha, Aroma EM and Ria Hayuna. 2015. “Konseling sebagai Sanksi Pidana Tambahan pada Tindak Pidana Kekerasan dalam Rumah Tangga.” *Jurnal Hukum IUS QUIA IUSTUM* 4 (22): 617-637.
- Martin, Chris. 2015. “When to Forget or Forgive Domestic Violence and Abusive Relations.” *Braindirector*. <https://www.braindirector.com/when-to-forget-or-forgive-domestic-violence-and-abusive-relations/>
- Mashabi, Sania. 2019. "Indonesia Darurat Kekerasan Seksual, Kenapa RUU PKS Tak Kunjung Disahkan?." *Kompas*. <https://nasional.kompas.com/read/2020/08/13/09403501/indonesia-darurat-kekerasan-seksual-kenapa-ruu-pks-tak-kunjung-disahkan?page=all>
- Moeljatno. 2012. *Kitab Undang-Undang Hukum Pidana Edisi Baru*. Jakarta: Bumi Aksara.
- Kazutaka Nomura, et. al. 2011. “Effects of Psychosocial Factors on Cognitive Behavior Therapy for Preventing Recidivism by Sex Offenders: A Meta-Analysis”, *Japanese Journal of Behavior Therapy*: 147.
- Nurhayati, Elly. 2000. *Panduan Untuk Perempuan Korban Kekerasan*. Yogyakarta: Pustaka Pelajar.
- Poerwandari, Kristi. 2005. “Hidden and Destroying: The Complex Layers of Violence against Women in Intimate Relationship.” in *Indonesian Women in a Changing Society*, by Kristi Poerwandari, 324. Seoul: Ewha Womans University Press.
- Prodjodikoro, Wirjono. 2010. *Tindak-Tindak Pidana Tertentu di Indonesia*, 118-119. Bandung: Refika Aditama.
- Rahayu, Ninik. 2018. *Politik Hukum Penghapusan Kekerasan di Indonesia*. Disertasi Fakultas Hukum Universitas Jember.



- Rahmah, Andi and Samsiar Arief. 2018. “Implementasi Mediasi Penal dalam Penyelesaian Kasus Kekerasan dalam Rumah Tangga (KDRT).” *Petitum* 6 (1): 8-21.
- Ramadhan, Choky Risda, Dio Ashar Wicaksana, and M. Rizaldi., *et al.* 2018. *Asesmen Konsistensi Putusan Pengadilan Kasus-Kasus Kekerasan terhadap Perempuan*. Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia.
- Randall, M and V. Venkatesh. 2016. “Criminalizing Sexual Violence Against Women in Intimate Relationship.” *AJIL Unbound* 109: 190.
- Rafikah, R. 2017. “Peranan pusat pelayanan terpadu pemberdayaan perempuan dan anak (P2TP2A) dalam menghapuskan kekerasan dalam rumah tangga (KDRT) di kota Bukittinggi.” *Islam Realitas: Journal of Islamic & Social Studies* 1(2): 173-186.
- Raynor, P and G. Robinson. 2009. *Rehabilitation, Crime and Justice*, 3. Houndmills: Palgrave Macmillan.
- Saraswati, Rika. 2021. “Gender Bias in Indonesian Courts: Is Perma No. 3 of 2017 the Solution for Gender-Based Violence Cases?” *Laws* 10: 2. DOI: <https://doi.org/10.3390/laws10010002>
- Soesilo, R. 1995. *Kitab Undang-Undang Hukum Pidana serta Komentar-Komentarnya Lengkap Pasal demi Pasal*, 209. Bogor: Politeia.
- Sonkin, D. 1987. *Domestic violence on trial*. New York: Springer.
- Sowden, J.N and M.E. Olver. 2017. “Use of the Violence Risk Scale Sexual Offender Version and the Stable 2007 to Assess Sexual Offender Treatment Change.” *Psychological Assessment*: 294.
- Sowe, Ebrima and Pelumi Akintunde. 2019. “Justification for Punishment in Criminal Law.” *ResearchGate*. https://www.researchgate.net/publication/337636626_Justification_for_Punishment_in_Criminal_Law
- T. Araujo Moraes, S. D., Fonseca, A. M., Bagnoli, V. R., Soares, J., Moraes, E. M., Neves, E. M., Rosa, M. D. A., Schlechta Portella, C., & Baracat, E. C. 2012. “Impact of domestic and sexual violence on women’s health.” *Journal of Human Growth and Development* 22: 253–258.
- United Nations Convention on the Elimination of All Forms of Discrimination against Women. 2012. *Committee on the Elimination of Discrimination against Women. Fifty-second session*. <https://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-IDN-CO-6-7.pdf>
- United Nations Women. 2006. *Treatment Programmes for Sex Offenders*. Diakses tanggal 1 September 2021. <https://evaw-global-database.unwomen.org/es/countries/asia/japan/2006/treatment-programmes-for-sex-offenders>.
- U.S. Department of Justice. 2013. *Program statement: Sex offender treatment*.
- Walker, L.E. 1999. Psychology and domestic violence around the world. *American Psychologist* 54(1): 21-29. <https://psycnet.apa.org/doi/10.1037/0003066X.54.1.21>
- Winder, Bellinda and Nicholas Blagden. 2019. *Helping to rehabilitate sex offenders is controversial – but it can prevent more abuse*. <https://theconversation.com/helping-to-rehabilitate-sex-offenders-is-controversial-but-it-can-prevent-more-abuse-111861>.



World Health Organization. 2009. *Promoting Gender Equality to Prevent Violence against Women*. WHO: Department of Gender and Women Health.

Zinsstag, Estelle et al. 2018. “Doing restorative justice in cases of sexual violence.” *ResearchGate*. DOI: [10.13140/RG.2.2.32085.12005](https://doi.org/10.13140/RG.2.2.32085.12005)

Legislation

The Indonesian Criminal Law

The Law No.23 Year of 2004 on Eradication of Domestic Violence

Bill of Eradication of Sexual Violence

The House of Representatives of the Republic of Indonesia Decree Number: 15/DPR RI/I/2004-2005 of Rules and Regulations of the House of Representatives of the Republic of Indonesia

Case Law

Court Ruling No. 126/Pid.Sus/2015/PNPbg

Court Ruling No. 150/Pid.Sus/2017/PN.Bkl

Court Ruling No. 122/PID/2013/PT-BNA

Court Ruling No. 245/Pid.Sus/2017/PN Tte

Personal Communication

1. Imam Nahe’i, Komnas Perempuan Commissioner for the 2020-2024 Period, 27th July 2021
2. Dian Novita, Coordinator of Public Policy Change Division (Divisi Perubahan Kebijakan Publik) of APIK Jakarta Legal Aid Institute, 5th August 2021
3. Uli Pangaribuan, Coordinator of Legal Services Division (Divisi Pelayanan Hukum) of APIK Jakarta Legal Aid Institute, 14th August 2021
4. Ramon Wahyudi, Depok District Court Judge, 28th August 2021
5. Wawan Suwandi, Pulih Foundation Public Relations Manager, 29th August 2021
6. Erich Folanda, Head of SESJAMBIN Administrative Section of the Attorney General’s Office of the Republic of Indonesia, 30th August 2021
7. Irene Putrie, Head of Sub-Directorate of Legal Actions and Legal Services of the Attorney General’s Office of the Republic of Indonesia, 1st September 2021