

# Sexual Consent Paradigm In The Framework Of Indonesian Legal: A Comparative Islamic Perspective

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## ABSTRACT

*This research aims to analyze the sexual consent paradigm in the Sexual Violence Crime Law and compare it with the principles of Islamic law. The focus of the research is to understand the extent to which the two paradigms are aligned or different in terms of protecting individual rights against sexual violence. This research uses qualitative methods with normative and comparative approaches. Analysis was carried out on the text of the TPKS Law and sources of Islamic law, such as the Al-Qur'an, hadith, as well as the opinions of ulama regarding sexual consent. Data was collected through literature studies and legal documents. Research findings show that the TPKS Law emphasizes the importance of free, conscious and non-coerced consent in sexual relations, regardless of marital status. In contrast, Islamic law provides a stricter framework regarding legal sexual relations only within the context of marriage. While both recognize the importance of consent, deep differences emerge over the limits and scope of legitimate relationships according to religion. The sexual consent paradigm in the TPKS Law and the principles of Islamic law have similarities in the aim of protecting individuals from sexual violence, but there are significant differences in their application. The TPKS Law adopts a more universal approach, while Islamic law places more emphasis on legitimate relationships within marriage. This research recommends the need to integrate religious values in national legal policies to achieve more holistic justice.*



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## 1. Introduction

Legal developments in the world are increasingly showing serious attention to the problem of sexual violence, one of which is Indonesia through the ratification of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS). This law aims to provide greater protection for victims of sexual violence, introduce a new paradigm in dealing with cases of sexual violence, and regulate various aspects including protection, prevention and prosecution of perpetrators. One of the main concepts raised in the TPKS Law is sexual consent, which is an important element in assessing whether a sexual relationship is legal or a form of violence. (Prianter Jaya Hairi, 2023)

Sexual violence is a form of human rights violation that can happen to anyone, both men and women, and has the potential to cause deep physical, psychological and social trauma. In Indonesia, efforts to tackle sexual violence have been further strengthened by the passing of the Sexual Violence Crime Law No. 12 of 2012. However, even though the principle of sexual consent has become the main focus in the Sexual Violence Crime Law, in the context of Islamic law, there are different views regarding sexual relations, especially those related to obligations and rights in marriage. In the view of Islamic law, sexual relations are considered valid if they occur within a valid marriage bond, with the wife's tamkin or obligation to fulfill her husband's rights, even though there are limits and principles of honor in that relationship. Therefore, the question arises regarding how the sexual consent paradigm in the Sexual Violence Crime Law is understood and applied within the framework of Islamic law which has its own view of rights and obligations in marital relations.

Research related to this theme has been carried out by several researchers, such as that carried out by Rizki Rahmasari who analyzed the meaning of "consent" in the Ministry of Education and Culture, Research and Technology No. 30 of 2021 regarding the phenomenon of sexual violence in the educational environment which is considered a legitimate effort against adultery. However, this research has not explicitly linked how the principle of sexual consent in the TPKS Law is translated in the context of Islamic jurisprudence and how these two legal frameworks can complement each other or conflict in the context of protection for victims of sexual violence.

However, the regulation of sexual consent in the context of Indonesian positive law is not free from challenges and controversy. The understanding and implementation of sexual consent itself is often influenced by different cultural values, social norms and religious views. (Rizkia Rahmasari, 2022) In Indonesia, as a country with a majority Muslim population, the principles of Islamic law in this case also have a significant influence on understanding sexual consent.

Along with the implementation of the TPKS Law which increasingly emphasizes the importance of consent in every sexual relationship, questions arise about the extent to which this Law can be collaborated with or linked to the principles of Islamic law, especially in terms of regulating sexual consensus. This is important because the different understanding between positive law and Islamic law has the potential to cause tension in law enforcement practices, as well as in the protection of victims' rights.

In the context of Islamic law in Malaysia, the issue of marital rape is a sensitive topic and is often discussed. Islamic law, which is the basis of the Sharia legal system in Malaysia, focuses on the relationship between husband and wife and their rights and responsibilities in marriage. However, the issue of marital rape, or what is better known as "marital rape," is a complex issue and is not fully recognized in the context of Sharia law in Malaysia. (Anggreni & Suardana, 2021) However, in modern developments, many parties, including human rights activists and legal experts, emphasize that marital rape is a form of sexual violence that needs to be viewed more critically. Several important elements in the discussion regarding Malaysia's handling of issues such as the Civil Code and Sharia Law.

Under the Malaysian Sexual Violence Code (seksyen 375), rape technically refers to sexual intercourse carried out without the consent of the other party. However, this section does not specifically mention marriage, and it is only applied to cases of corruption involving individuals who are not legal partners. Sharia law, which regulates marriage and relationships between husbands and wives in Malaysia, does not clearly mention marital rape. In some traditional interpretations, husbands are considered to have sexual rights to their wives, but this does not mean that sexual relations can be carried out without consent or without considering the wife's condition. (Ahmad Zaky, 2024)

From an Islamic legal perspective, legal sexual relations are only permitted within a marriage that is valid according to the Shari'a. The principles of niyyah (intention), agreement (agreement), and honor of the parties involved are very important things to pay attention to. However, in many ways, the regulation of sexual consent in Islamic law can be different from the regulation in the positive legal system, especially in terms of how to understand the concepts of sexual violence, domestic violence, and protection of victims. (Dwi Dasa Suryantoro, 2021) Sexual consent in the Tamkin jurisprudence framework shows that even though there are sexual obligations between husband and wife, consent to sexual relations is still important. A husband or wife must not force sexual relations without the clear will or consent of their partner. In this case, Islam pays attention to aspects of justice and the rights of partners, so that even though sexual obligations exist, the principles of harmony and consent remain the main basis.

The urgency of this research lies in the need to understand and criticize the application of sexual consent in the Sexual Violence Criminal Law in Indonesia and the Sexual Violence Code in Malaysia from the perspective of Islamic law, which is the legal basis for each country. The aim of this research is to analyze the differences and similarities between the sexual consent paradigm in the TPKS Law and the Sexual Violence Code and the principles of Islamic law, as well as to explore potential legal solutions that can integrate the two in order to provide more protection for victims of sexual violence. The issue that will be discussed is whether the principle of sexual consent in the TPKS Law and the Torture Code can be accepted and applied within the framework of Islamic law without ignoring the religious values contained therein.

Positive legal theory sees law as a set of rules created and accepted by the state, which has the authority to uphold justice in society. In the context of sexual consent, Indonesian positive law emphasizes that consent must be given voluntarily and without coercion. For example, in Indonesian criminal law, acts of sexual violence are considered unlawful if they are carried out without the consent of the parties involved. Positive law also recognizes that consent is part of an individual's right to freedom and autonomy of their body, which must be protected by the state. In this case, sexual consent is not just a moral obligation, but is also an element that must be fulfilled so that a sexual act is not considered a violation of the law. (Salim Hs dan Erlies Septiana, 2013)

Meanwhile, feminist theory provides a more critical perspective on power relations in a sexual context. Feminism considers that many social and legal norms ignore or even exacerbate gender inequality, including regarding sexual consent. In feminist theory, sexual consent is not only seen from a voluntary aspect, but also in the context of power and control over women's bodies. Feminism highlights that in many cases, women are often in an unequal position in sexual relationships, where their consent can be influenced by social norms, fear, or pressure. Therefore, feminism puts forward the importance of a more holistic understanding of consent, which does not only involve verbal agreement, but also awareness of the power dynamics that exist in the relationship. Therefore, it is important to examine and compare the sexual consent paradigm in the TPKS Law and the Sexual Violence Code with the perspective of Islamic law to find a common ground that can ensure optimal protection for victims of sexual violence without ignoring the principles of Islamic law held by the majority of society. Indonesia, Malaysia and Marocco.

## 2. Theory

### a. Positive Legal Theory

Positive Legal Theory considers that law is a set of rules created and accepted by the state to regulate the behavior of members of society. Law in this view is a legitimate product of state authority, which regulates the relationship between individuals and the state as well as between individuals in society. Positive law does not depend on universal moral or ethical principles, but on what is regulated and established by state authorities through laws, regulations, and court decisions. (Hart, 1961) In other words, positive law only includes rules that are officially recognized and enforced by the state, regardless of whether these rules are based on certain moral or religious norms.

In the context of sexual consent, positive legal theory stipulates that sexual consent is an important element in assessing whether a sexual relationship is legal or not. In Indonesia, this is reflected in various regulations relating to the protection of human rights, especially for women and children, such as in the Criminal Code (KUHP) and the Child Protection Law (UU No. 35 of 2014). In the context of Indonesian positive law, sexual consent must be given freely, voluntarily, and without any coercion, threats, or deception. Any sexual act that occurs without valid consent is considered a violation of the law, such as in cases of sexual harassment or rape, which are regulated in Article 285 of the Criminal Code.

Positive legal theory emphasizes that sexual consent, in the view of state law, is the right of every individual to choose or refuse to have sexual relations, which must be respected by the other party. (Rasmussen, 2017) In this case, state law plays a role in ensuring that individuals can enjoy their bodily freedom and autonomy, by limiting actions that violate the individual's rights, including sexual violence. Positive law seeks to provide justice through law enforcement involving judicial institutions and law enforcement officers.

### b. Islamic Sharia Theory

The Islamic Sharia theory of sexual consent emphasizes the importance of free will and equality in sexual relations, even in the context of marriage. In the view of Islamic law, sexual relations must be carried out with the consent and willingness of both parties - both husband and wife - not based on coercion or injustice. (Imam Mahdi, 2024) Al-Qur'an dalam Surah Al-Baqarah (2:223)

نِسَآؤُكُمْ حَرْثٌ لَّكُمْ فَأْتُوا حَرْثَكُمْ أَنَّى شِئْتُمْ وَقَدِّمُوا لِأَنفُسِكُمْ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّكُمْ مُّلْقَوَةٌ وَبَشِّرِ الْمُؤْمِنِينَ

"Your wife is a field for you. So, come to your field (mix properly and naturally) when and how you like. Prioritize (the best thing) for yourself. Fear Allah and know that you will (someday) face Him. Tell the good news to the believers."

Emphasizes that even though a husband has rights over his wife, sexual relations must still be carried out with mutual consent and will. The hadith of the Prophet Muhammad SAW also reminds us that there should be no coercion in sexual relations, especially if one party feels uncomfortable or there is a valid reason for refusing it, such as health or fatigue. (Veratih Iskadi Putri, 2011) Therefore, in the context of Islamic law, sexual consent is considered a right that cannot be ignored in a marriage relationship.

The Sexual Violence Crime Law (UU TPKS) which was passed in Indonesia in 2022 has the aim of protecting victims of sexual violence, providing victims' rights to obtain justice, and preventing acts of sexual violence in various forms. The TPKS Law recognizes that legal sexual consent must be given freely, consciously and without coercion. This is in line with the principles of Islamic law which emphasize the importance of consent given without pressure or coercion. However, from an Islamic legal perspective, there are additional dimensions related to the obligations of husband and wife in a marital relationship that are not always found in Indonesian positive law. However, in general, Islamic law and the TPKS Law are similar in emphasizing that sexual violence, whether in marriage or in other contexts, is not justified. Therefore, Islamic sharia theory can be said to support the implementation of the TPKS Law in the context of protecting the rights of individuals, especially women, to give legal consent to sexual relations.

### *c. Theory Fikih Tamkin (Emancipation)*

Tamkin's Fiqh theory is a concept related to women's rights in the context of marriage according to an Islamic perspective. The word "tamkin" comes from Arabic and means "to give permission" or "to allow." In the context of fiqh (the science of Islamic law), fiqh tamkin refers to a woman's right to enjoy her rights in the household, including the right to give sexual consent in a marriage relationship. In some classical fiqh interpretations, women are considered obliged to fulfill sexual obligations towards their husbands without considering personal consent, but along with the development of contemporary thought and interpretation, tamkin fiqh is now understood as recognizing that women have the right to decide whether they are ready and willing to have sexual relations within marriage. (Moh. Fauzi, 2023)

In this context, Tamkin jurisprudence prioritizes respect for women's rights, which includes sexual consent. Many modern scholars emphasize that women's right to consent to or refuse sexual relations within marriage is part of respect for the dignity and freedom of their bodies. This thinking is close to the feminist view which emphasizes gender equality and the right to bodily autonomy. Therefore, although marriage in Islam contains sexual obligations, the right to give or refuse consent is still respected, especially if there are health or psychological reasons. In many ways, tamkin fiqh attempts to strike a balance between marital obligations and individual rights, recognizing that women also have bodily autonomy that must be respected.

Feminism, in the context of legal and social theory, demands equality in sexual relations, including marriage. Feminism emphasizes that sexual consent must be given freely and without coercion, which means that every individual—both men and women—must have the right to choose whether they want to engage in sexual activity or not, in any context, including within a marital relationship. This perspective argues that patriarchal social systems often place women in a position where their consent is not respected or even ignored, especially in marriage. (Nur Azizah, 2021)

Feminism encourages the importance of consent in sexual relationships that are free from all forms of pressure or inequality. In the context of tamkin jurisprudence, feminist views can provide a critical perspective on traditional norms that may suppress women's right to refuse sexual relations even though they are married. Feminist emancipation invites us to see sexual consent as a basic individual right, which cannot be limited by social norms or religious regulations that consider sexual relations as a mere obligation. Thus, feminist theory in the context of Tamkin jurisprudence invites to see sexual consent as part of women's rights over their bodies, even in marriage.

### **3. Research Method**

This research uses normative legal research using two approaches, namely the statutory approach and the conceptual approach. (Ibrahim Jhonny, 2006) A legislative approach was taken to examine regulations relating to sexual consent, namely Law Number 12 of 2022 concerning the Crime of Sexual Violence, a Comparative Approach, namely comparing the Malaysian Penal Code and the Marrocco Criminal Code with using the perspective of Islamic law and tamkin (emancipation) fiqh. The legal material search technique uses document study techniques, and study analysis uses qualitative analysis.

### **4. Results and Discussion**

#### ***a. The sexual consent paradigm in Indonesia's Sexual Violence Crime Law, Malaysia's Sexual Violence Code and Marocco's Criminal Code***

The Law on Criminal Acts of Sexual Violence (UU TPKS) regulates the prevention of Crimes of Sexual Violence, handling, protection and restoration of victims' rights, coordinating between the Central Government and Regional Governments and international cooperation so that the prevention and handling of victims of Sexual Violence can be carried out effectively. effective. (Irda Nur Khumaeroh, 2023) There are four updates in the TPKS Law, namely that there are other criminal acts which are stated expressly as Crimes of Sexual Violence as regulated in the provisions of the laws, there are comprehensive procedural law regulations starting from the investigation stage to the examination in court, the victim's right to treatment, protection and recovery from the occurrence of a Crime of Sexual Violence is the state's obligation and is carried out in accordance with the conditions and needs of the victim, and cases of Crime of Sexual Violence cannot be resolved outside the judicial process, except for child perpetrators.

Sexual violence is also regulated in the Criminal Code (KUHP), which in general only concerns rape and sexual abuse. It is felt that this arrangement has not been able to fulfill the guarantee of protecting victims' rights. The Criminal Code regulates sexual violence in the Crimes Against Morality chapter. In this case, morality places greater emphasis on protecting society's sense of morality rather than protecting citizens and criminal attacks on their bodies.

Based on Article 284 of the Criminal Code which states that "Everyone who has sexual intercourse with someone who is not their husband or wife is punished for adultery." Adultery as discussed in the Criminal Code occurs when sexual intercourse occurs between a married individual and another person. Sexual relations between unmarried individuals carried out with consent and agreement will not be considered adultery according to the definition of Article 284 of the Criminal Code. If there is coercion or sexual intercourse outside of consent, Article 285 of the Criminal Code can be subject to Article 285 of the Criminal Code which states that "Anyone who, by force or threat of violence, forces a woman to have sexual intercourse with her outside of marriage, is threatened with committing rape." However, in its development the TPKS Law divided criminal acts into nine types, namely non-physical sexual harassment, physical sexual harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence.

Malaysia's legal view regarding the sexual consent paradigm is very complex and closely related to laws that regulate issues related to the protection of human rights, morality and social ethics. In this context, Malaysian law is based on the principles of sharia law, the torture canon, as well as more general regulations regarding the protection of individuals against acts deemed to constitute rape or sexual abuse.

In general, Malaysian law defines sexual consent as an act done willingly and without coercion. However, there are various interpretations of what is meant by valid consent. There are several elements that make it a source of law for the Malaysian state in

discussing sexual consent, such as Seksyen 375 of the Sexual Violence Code, the consent given must be given freely and without coercion. If someone is forced to have sexual relations or does not give consent voluntarily, then he is considered rapol. In cases of robbery, the “consent” factor is key. If there is coercion, threats, or failure to consent (such as being under the influence of alcohol or drugs), it may be considered a mistake.

There was discussion about awareness of individual rights and consent in sexual relations, including how Malaysian law addresses situations where consent is given under duress, or in situations of inability to give consent (such as unconsciousness or the influence of illicit substances). Overall, although there is an element of sexual consent in Malaysian law, there is still room for improvement in understanding and assessing consent more clearly and keeping up with current social developments. In particular, with increasing awareness regarding the effects of coercion, influence, and power imbalances in sexual relationships, society and authorities in Malaysia continue to strive to improve understanding and protection of individual rights in the context of sexual consent. (Arif Hidayat, 2023)

The fuqaha define zina as having sexual relations in the sense of inserting a man's penis into a woman's vagina which is declared haram, not syubhat, and based on lust. The crime of adultery (jarimah zina) is a criminal offense that is categorized as jarimah hudud. The sanction for the offense of adultery in Islamic Criminal Law is Punishment (had). This punishment can be imposed if there is a confession from the perpetrator that he has committed adultery or from witness statements, because it concerns the life and death of a person. (Muhammad Taufiq, 2023)

There are several forms of sexual harassment based on level, including:

1. Gender Harassment is an action or statement that demeans someone based on their gender (sexist). These forms include: pornographic stories or inappropriate jokes; rude and sexual remarks directed at someone; lewd advances or comments about a person's appearance, body, or life; peeping or looking inappropriate behavior; showing, using, or distributing indecent material such as pornographic images, books, or videos; treating someone differently because of their gender, such as differentiating treatment or ignoring someone based on their gender; as well as making derogatory statements about women's career choices. (Rohmatul Anam, 2022)
2. *Seduction Behavior is a sexually inappropriate or degrading act or request without a clear threat.* (Rohmatul Anam, 2022) Forms include: talk about personal or sexual matters; an attempt to seduce someone; providing sexual attention; attempts to build romantic relationships; solicitation to commit indecent or obscene acts; intentionally invading someone's privacy; making someone the target of innuendo in sexual conversations; using sexually offensive language; and spreading sexual gossip about someone.
3. *Sexual Bribery is an invitation to perform certain sexual acts accompanied by a promise of certain rewards, such as a salary increase or position promotion.* (Fira Maya Shilfa dan Junifer Dame Panjaitan, 2023) Forms include: giving subtle bribes by promising rewards for performing certain sexual acts, such as hugging, touching, kissing, or caressing; openly offering gifts in exchange for satisfying someone's sexual desires; using promises or gifts as coercion to engage in sexual acts; and giving tangible gifts to someone in exchange for sexual services rendered.
4. *Sexual Coercion or Sexual Threats is a form of pressure to carry out sexual activity using threats, either subtle or direct. This can include a variety of situations, such as providing implied punishment to someone who refuses a sexual request, overtly threatening someone to perform a sexual act, forcing someone to engage in sexual activity by exploiting their fear or anxiety, and causing negative repercussions for*

*someone who refuses an act. sexual. These are all unacceptable forms of sexual harassment and often violate human rights. (Fira Maya Shilfa dan Junifer Dame Panjaitan, 2023)*

*Sexual consent is the main thing that must be fulfilled in forming a healthy relationship when having sexual relations. This is done with the consent of the people involved in sexual activity without coercion and cannot be assumed, but the actions carried out must be clearly stated through words and actions that are not vague. The act carried out does not matter how long it has been done or to what extent a person has been in contact with another person, but consent remains the main thing that must be remembered before engaging in sexual relations. According to the Institute for Criminal Justice Reform (ICJR), sexual relations can be categorized as a crime if there is no sexual consent in the sexual relations. The state must provide protection to victims when relations are carried out without sexual consent. On the other hand, if sexual relations are not based on sexual consent then the state cannot have the authority to intervene. (Riki Zulfiko, 2022)*

Legal protection for victims of sexual violence must be carried out comprehensively starting from legal entities, legal structures and legal culture, as well as a legal system that is properly developed to strengthen comprehensive sexual violence protection. Victims have the right to protection regarding protecting the safety of people, families and property, being free from threats related to the testimony they give, being protected from coercion when providing information, and having their identities kept secret. In the TPKS Law, protection and recovery are provided from the moment a criminal act of sexual violence occurs to ensure the fulfillment of the victim's rights. Article 30 paragraph (2) of the TPKS Law states that restitution includes compensation for loss of wealth or income, compensation for losses incurred as a result of directly related suffering as a result of criminal acts of sexual violence, compensation for medical and/or psychological treatment costs, and/or compensation for other losses suffered by the victim as a result of the Crime of Sexual Violence.

The involvement of the community and family as regulated in Article 85 of the TPKS Law allows for community participation in preventing, supporting, recovering and monitoring crimes of sexual violence. The role of the community is very important in preventing sexual violence crimes and increasing insight to be more caring and careful. The implementation of the TPKS Law has had a positive impact on people's courage in reporting perpetrators of sexual violence to agencies and law enforcement. Their courage is based on the implementation of rules and policies, the availability of services, and human rights. The community is trying to get involved in overcoming criminal sexual violence behavior, such as education about self-defense, family education, and overcoming sexual violence.

The sexual consent paradigm in the TPKS Law in Indonesia is an important breakthrough in providing more comprehensive legal protection for victims of sexual violence. By recognizing the importance of free and conscious consent in every sexual relationship, this law seeks to reduce and overcome criminal acts of sexual violence in all its forms. (Muhammad Gerald Arsy & Wiwin Yulianingsih, 2023) However, the implementation of this law still faces big challenges, both in terms of social understanding, education, and challenges in law enforcement. For this reason, continued efforts are needed in outreach and education regarding sexual rights, as well as training for law enforcers to ensure that the TPKS Law can be implemented effectively and provide maximum protection for victims of sexual violence in Indonesia.

When a comparative study is carried out between the countries of Indonesia, Malaysia and Marocco regarding sexual consent, there are differences which are typical in that these countries have different points of view regarding how to deal with sexual violence, even though these three countries have the largest Muslim population in the world, they creating different legal regulations regarding sexual consent.



The issue of sexual consent in Malaysia is regulated by several main laws including the Penal Code and the Women's Protection Act (Domestic Violence Act). Sexual consent in the Seksyen 375 Penal Code regulates rape. What is meant by consent is an important element to distinguish between legitimate and illegitimate actions. If someone is forced or threatened to have sexual intercourse without consent, then it is considered rape. Consent given must be voluntary, knowledgeable, and given without coercion. If a person does not give clear consent or engages in sexual intercourse by force or through deception, then it is considered rape. In the context of marriage, there are certain exceptions. For example, although there are provisions for marital rape, many legal activists in Malaysia are trying to change regulations that are deemed not to fully protect women's rights in this context. The Women and Children Protection Act provides protection for women and children from all forms of physical and sexual violence. In this context, consent to sexual relations in the context of domestic violence is emphasized.

Rape in Morocco is regulated by Articles 486 to 489 of the Morocco Code of Penal. Rape is defined as sexual intercourse carried out without the victim's consent, using violence, threats or coercion. Morocco law requires that there be a clear element of coercion or violence to prove that rape has occurred, and the consent given by the victim must be valid, free, and not influenced by threats or manipulation. One of the main challenges in Morocco law is proving that the victim did not give consent, especially if there is no clear physical evidence of violence. (Benali, 2015) In some cases, if the victim cannot explicitly prove that he or she did not give consent, this can cause difficulties in the judicial process. Law 103-13 was passed in 2018, which provides more protection for women and victims of sexual violence in Morocco. This law introduces a number of new provisions that clarify the definition and meaning of sexual violence, as well as providing wider space for victims to report acts of violence. social and cultural challenges faced in handling sexual cases in Morocco, including social norms that sometimes blame the victim or make victims feel embarrassed to report. (Moussaoui, 2017)

Table 1. A Global Comparison of Sexual Consent

Aspect	Indonesia	Malaysia	Marocco
<b>legal basis</b>	Criminal Code (KUHP) and Sexual Violence Crime Law No. 12 of 2022	Penal Code and Women's Protection Act	Criminal Code (Criminal Code) and Islamic Law (Shariah)
<b>Marital rape</b>	Marital rape is recognized as a criminal offense, although the practice is often influenced by social norms.	Marital rape is not explicitly regulated but there have been efforts to turn it into a criminal offense.	Marital rape is prohibited, although its implementation is often influenced by cultural and religious norms.
<b>Laws that protect women</b>	UU no. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT), as well as Child Protection Law.	Women and Children Protection Act and domestic violence laws	Domestic violence and rape laws are regulated in the Criminal Code.

<b>Social and Cultural Challenges</b>	There are many challenges in recognizing and implementing the law, especially in societies with patriarchal norms.	Huge challenges in recognizing marital rape, as well as in implementing laws to protect women's rights.	Social and religious norms often influence the application of the law, especially in cases of marital rape.
<b>Policy and Reform</b>	Legal reforms continue to be carried out to improve protection of women's and children's rights, although implementation is still limited.	There are efforts to change the law, especially regarding the protection of women in marriage and domestic violence.	There are policies that seek to strengthen protection for women, although their implementation is hampered by local culture.

The global paradigm of sexual consent emphasizes the importance of free and voluntary consent in sexual relations. Even though there are similarities in principles, the application of law and the protection of women in each of these countries is greatly influenced by social, cultural and religious factors. These countries strive to increase protection of women's rights, but existing social and cultural barriers often prevent the advancement of more progressive laws, especially in the context of marriage and sexual violence.

#### ***b. Views of Islamic Law on the Concept of Sexual Consent in the Context of Sexual Violence.***

Islam has taught perfectly about aspects of human life, such as managing small things to big things. One of the areas that is regulated is the issue of rules or laws, both those that apply individually and socially, or more precisely, Islam regulates social life. (Ismail Nawawi, 2012) Islam means submission and surrender of a servant when facing his God. This means that humans in dealing with their God (Allah SWT) must feel small, admit weakness and justify the power of Allah SWT.

The definition of law is basically anything that is said by Allah SWT which relates to the actions of people who are burdened with the law (mukallaf) and whose implementation is required. That is what is called shari'ah or the path that must be taken. In Manna' al-Qhatthan's opinion, sharia means "all the provisions of Allah SWT which are prescribed for His servants, whether regarding faith, worship, morals, or muamalah." (Al-Qhattan, 1976) With this understanding, sharia is the law that is lived or obeyed by those who are burdened by the law, namely themukallaf. If it is not implemented, themukallaf has certain punishment consequences.

Islamic law is usually referred to by several terms or names, each of which describes a certain side or characteristic of the law. There are at least four names that are often associated with Islamic law, namely sharia, fiqh, sharak law, and qanun. (Abdul Wahid Musttofa, 2013) In another sense, Islamic law is law that originates from and is part of the Islamic religion. In another sense, Islamic law is law that originates from Islam and is part of the Islamic religion.

Islamic law has a very clear view regarding sexual consent, both in the context of a marital relationship and in contexts outside of marriage. In Islam, sexual relations are not only seen as part of the biological relationship between husband and wife, but also as an obligation based on the principles of love, mutual understanding and justice. Husband-Wife Relationship in Marriage: In Islamic law, marriage is a legally and socially valid bond,

in which husband and wife have rights and obligations to each other. One of a husband's rights is to have sexual relations with his wife, and vice versa. However, this does not mean that a husband or wife can force their partner in sexual relations. Clear sexual consent, without coercion, remains an important principle in Islam. Husbands are not permitted to force their wives to have sexual relations if the wife does not want to, except in certain conditions that are justified in the Sharia (such as if the wife is sick or there are Sharia obstacles).

In the Qur'an, Allah says about the importance of good treatment in the husband-wife relationship :

وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا

"And interact with them (wives) in a good way. If you don't like them, then maybe you don't like something, even though Allah has made it a lot of good." (QS. An-Nisa: 19)

This verse shows that sexual relations in marriage must be carried out in a good manner and there must be no coercion. If there is disagreement or disagreement, then there must be healthy communication and mutual respect.

Regarding sexual relations, Islam only recognizes marriage. In terms of Islamic law, marriage, as stated by Abu Yahya Zakariya Al Anshary, is a contract that contains legal provisions regarding the permissibility of sexual relations with the word *nikah* or words that are synonymous with it. (Mubarok & Arif, 2018) Meanwhile, sexual relations carried out outside the bonds of marriage constitute an act of adultery. According to Islamic language and terms, adultery has the same meaning, namely sexual intercourse between a man and a woman on their front genitals without any ties of ownership or doubts about ownership. Meanwhile, *Jarimah zina* according to Islamic law is any sexual relationship that is forbidden, whether carried out by a person who is married or who is not yet married, as long as he or she is classified as a *mudallaf* person, even if it is done willingly.

Incidents of violence against women are found in South Asian countries, officials who reject a firm stance on violence against women indicate that gender bias occurs in government and law enforcement officials. Due to widespread quality and quantity, the justice system has not been able to provide compensation and justice for women victims of violence. (Unaiza Niaz, 2003) The development of social conditions is important to create protection for women, because as a form of equality in terms of gender, by forming the Sexual Violence Crime Law the government creates legal force for sexual violence behavior that can harm women. (Hartanto, 2022)

Tamkin jurisprudence (which in this context refers to "providing convenience" or "giving permission") is a concept in Islamic law relating to husband-wife relationships. In general, in Tamkin jurisprudence, the husband has the right to request his rights as a husband, one of which is in terms of sexual relations. On the other hand, wives also have the right to obtain their rights, including the right to be treated well, respected and not forced into sexual relations. (Ash- Shallabi Muhammad Ali, 2006)

In Indonesia, the Sexual Violence Crime Law (UU TPKS) which was enacted in 2022 provides a new approach to the problem of sexual violence, by covering broader regulations and involving equal rights for every individual in sexual relations. In this context, the view of Tamkin jurisprudence on sexual consent in the TPKS Law is an interesting thing to analyze, because there are differences between classical jurisprudence teachings and the modern positive legal approach which prioritizes equality and protection of individual rights.

Tamkin Jurisprudence in the Context of Sexual Relations in Marriage. Tamkin jurisprudence explains that a wife is obliged to give tamkin (open herself and respond) to her husband in matters of sexual relations, unless there are sharia obstacles, such as

menstruation, postpartum, or other reasons justified in the sharia. In the traditional view of fiqh, the husband has the right to demand sexual relations, while the wife is expected to fulfill this obligation as part of the rights and responsibilities in marriage. (Fasihuddin et al., 2023)

However, differences in views arise when we compare this principle with the concept of sexual consent in positive law, such as that contained in the TPKS Law. Even though tamkin jurisprudence emphasizes the wife's obligation to fulfill her husband's requests in the context of sexual relations, sexual consent in Islam must still be based on the principles of honor and welfare. In Islam, although there is an obligation to fulfill the husband's rights, the wife's rights are also recognized and protected. There is no coercion in sexual relations which is contrary to the principles of love and mutual respect.

The TPKS Law emphasizes that every sexual relationship must be carried out with clear consent and be free from elements of coercion, threats or manipulation. In Article 6 paragraph (1) of this Law, it is stated that (*Undang-Undang No 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual*, n.d.) :

"Everyone has the right to be free from sexual violence."

As for Article 8 paragraph (1), it is emphasized that sexual consent must be given voluntarily and without coercion:

"Consent to sexual intercourse must be given voluntarily, clearly and without coercion."

This is in line with the basic principles of human rights (HAM) which prioritize individual freedom and dignity. There is no room in Indonesian positive law for the practice of forced sexual relations, either in the context of marriage or outside marriage.

The application of Islamic legal principles in the context of the TPKS Law in Indonesia faces several challenges, including: Differences in Interpretation in Society: Although Islamic law emphasizes the importance of sexual consent in every relationship, the application of this principle in social practice can differ depending on the religious interpretation accepted by the community. public. Some circles may still think that wives must always fulfill sexual obligations towards their husbands without considering explicit consent. (Ash- Shallabi Muhammad Ali, 2006) Tension between Positive Law and Sharia Although there are similarities in principle, there is tension between the application of positive law in Indonesia which is based on principles of democracy and human rights with some traditional views in society which are more based on religious teachings. This is a big challenge in implementing laws that prioritize the principle of equality in terms of sexual consent in marriage.

Tamkin jurisprudence in the context of sexual consent in marriage still requires agreement and honor between partners. Coercion in sexual relations, both within marriage and outside marriage, is still considered sexual violence in Islam, which is contrary to Islamic teachings about love, respect and protection of the dignity of every individual. (Moh. Fauzi, 2023) This principle is also in line with the values contained in modern positive law, such as in the Sexual Violence Crime Law (UU TPKS), which emphasizes that free and free sexual consent is absolute in every legal sexual relationship.

There are similarities between the views of Islamic law and the TPKS Law in terms of the emphasis on the importance of honor and justice in sexual relations. Both emphasized that sexual relations should not be carried out under coercion and must respect the partner's wishes. (Asfinawati, Reny Rawasita Pasaribu, 2024) However, fundamental differences arise in the scope of application of sexual consent. In Islamic law, sexual consent is mostly understood in the context of a legal marriage, whereas in the TPKS Law, sexual consent applies to all types of sexual relations, regardless of marital status. This law recognizes that a person, even though they are married, still has the right to give or

refuse sexual consent freely, which implies that there is no place for sexual violence in marriage.

However, there is a challenge that in general the TPKS Law and Islamic law have the same goal of protecting individuals from sexual violence and prioritizing respect for a partner's free will in a sexual context. However, challenges arise when positive law regulates sexual consent in relationships outside of marriage, which may not be fully in line with Islamic legal teachings which emphasize marriage as the basis for legal sexual relations. To overcome these differences, a more inclusive and sensitive approach to religious values is needed in the formation of responsive legal policies, so that protection for victims of sexual violence is maintained without ignoring religious norms that exist in society.

## 5. Conclusion

The sexual consent paradigm as reflected in the Sexual Violence Crime Law (UU TPKS) and the principles of Islamic law have similar basic values, even though they come from different legal systems. The TPKS Law and Islamic law both prioritize the protection of individual rights in the context of sexual relations. Both emphasize that sexual relations must be carried out with clear consent, be voluntary and free from coercion. Contributions to the sexual consent paradigm from Indonesia, Malaysia, and Morocco provide a rich perspective on how laws and cultural norms influence the protection of sexual rights, especially in the context of marriage and sexual violence. Indonesia, with a secular legal system that recognizes marital rape, provides an important example for other countries about the importance of including protection for women in law. Although challenges in legal implementation remain, Indonesia is showing progress in recognizing that sexual consent must be given freely, voluntarily and without coercion, even in the context of marriage. Meanwhile, Malaysia and Morocco, both of which have a strong influence of Islamic law, demonstrate the tension between religious principles and the need to protect women's rights in terms of sexual consent. Malaysia faces challenges in recognizing marital rape in state law, despite a push for reform. Morocco, with laws more influenced by Sharia, recognizes marital rape, but its implementation is often hampered by social and religious values. These three countries, although they have different approaches, contribute valuable ideas to global developments regarding the protection of sexual rights, especially in creating a balance between state law and religious and cultural norms.

The strength of this research lies in its comparative approach which brings together Indonesian legal perspectives with Islamic principles from Malaysia and Morocco which regulate rights and obligations in sexual relations, and sees how these two views complement or conflict with each other. This provides a more comprehensive picture of the challenges faced in realizing equality and protecting individual rights, especially in matters of sexual consent.

Recommendations for further research include developing a more in-depth study regarding the implementation of sexual consent laws in Indonesia that are based on a more inclusive understanding of human rights and gender justice. Future research also needs to explore further the role of legal and religious interpretation in formulating policies that can protect victims of sexual violence without causing discrimination or injustice against certain groups.

## 6. References

- Abdul Wahid Musttufa. (2013). *Hukum Islam Kontemporer*. Sinar Grafika.
- Ahmada Zaky. (2024). *Kekerasan Seksual Suami Terhadap Istri Persepektif Undang-undang No. 23 Tahun 2004 dan Hukum Islam*. IAIN ParePare.

- Al-Qhattan, M. K. (1976). *At-Tasyri' wa al-Fiqh al-Islam: Tarikhan wa Manhajan*. Maktabah Wahid Mustofa.
- Anggreni, N. M., & Suardana, I. W. (2021). Analisis Perbandingan Hukum Pelecehan Seksual Di Tempat Kerja "Quid Pro Quo" Di Indonesia Dan Malaysia. *Jurnal Kertha Desa*, 9(3), 12-26.
- Arif Hidayat. (2023). *Rekonstruksi Regulasi Perlindungan Hak Korban Tindak Pidana Kekerasan Seksual Berbasis Nilai Keadilan*. Universitas Islam Sultan Agung Semarang.
- Asfinawati, Reny Rawasita Pasaribu, S. S. A. (2024). *Pedoman Pemaknaan Pasal Undang-Undang No. 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual (UUTPKS)*. STH Indonesia Jentera.
- Ash- Shallabi Muhammad Ali. (2006). *Fikih Tamkin*. Pustaka Al-Kautsar.
- Benali, F. (2015). *Le Droit Penal Marocain: Partie Generale* (Bruylant).
- Dwi Dasa Suryantoro, A. R. (2021). Nikah Dalam Pandangan Hukum Islam. *Jurnal Pemikiran, Pendidikan Dan Penelitian Ke-Islaman*, 07(02), 39-45.
- Fashihuddin, M., Sj, F., & Izzuddin, A. (2023). Rekonstruksi Konsep Tamkin Sempurna dalam Pasal 80 Ayat (5) KHI Perspektif Maqasid Abdullah bin Bayyah. *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, 5(1), 621-636. <https://doi.org/10.37680/almanhaj.v5i1.2588>
- Fira Maya Shilfa dan Junifer Dame Panjaitan. (2023). Paradigma Baru Hukum Perlindungan Anak dari Kekerasan Seksual Pasca Kitab Undang-Undang Hukum Pidana Nomor 1 Tahun 2023. *Jurnal Penelitian Dan Pengabdian Masyarakat*, 03(08), 3197-3208.
- Hart, H. L. A. (1961). *The Concept of Law*. Oxford University Press.
- Hartanto, F. A. P. (2022). Refleksi Kekerasan Seksual dan Pemaksaan Seksual terhadap Perempuan: Perspektif Hukum Positif dan Hukum Islam. *DIKTUM: Jurnal Syariah Dan Hukum*, 20(02), 278-296.
- Ibrahim Jhonny. (2006). *Teori dan Metodologi Penelitian Hukum Normatif*. Bayu Media Publishing.
- Imam Mahdi. (2024). *Sexual Equality Dalam Perspektif Al-Qur'an: Solusi Terhadap Dominasi Seksual*. Universitas PTIQ Jakarta.
- Irda Nur Khumaeroh. (2023). Kebijakan Hukum Pidana Terhadap Perkembangan Tindak Pidana Kekerasan Seksual yang Bertujuan Menciptakan Keadilan Gender. *Jurnal Hukum Indonesia*, 2(2), 53-59.
- Ismail Nawawi. (2012). *Fikih Muamalah (clasic dan kontemporer)*. Ghalia Indonesia.
- Moh. Fauzi. (2023). *Fikih Anti Kekerasan Seksual*. Pustaka Pelajar.
- Moussaoui, s. (2017). *La Protection Juridique des Droits de la Femme au Maroc*. L'Harmattan.
- Mubarok, M. H., & Arif, S. (2018). Pernikahan Pada Waktu Ihram Menurut Imam Syafi'i dan Imam Abu Hanifah. *Mizan: Journal of Islamic Law*, 1(2), 273-306. <https://doi.org/10.32507/mizan.v1i2.127>
- Muhammad Gerald Arsy, & Wiwin Yulianingsih. (2023). Undang - Undang Tindak Pidana Kekerasan Seksual Dalam Pemenuhan Hak Korban. *ALADALAH: Jurnal Politik, Sosial, Hukum Dan Humaniora*, 1(3), 01-09. <https://doi.org/10.59246/aladalah.v1i3.321>
- Muhammad Taufiq. (2023). *Pidana Islam Dalam Hukum Positif Indonesia*. Pustaka Pelajar.

- Nur Azizah. (2021). Aliran Feminis dan Teori Kesetaraan Gender dalam Hukum. *Journal of Gender and Children Studies*, 1(1), 1-10.
- Prianter Jaya Hairi, M. L. (2023). Implementasi Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual. *Jurnal Negara Hukum*, 14(02).
- Rasmussen, H. J. (2017). *A. History of the Philosophy of law*. Rowman& Littlefield.
- Riki Zulfiko. (2022). Paradigma Seksual Consent Dalam Pembaharuan Tindak Pidana Kekerasan Seksual. *Law Journal Pagaruyuang*, 5(2), 104-122.
- Rizkia Rahmasari. (2022). Analisis Makna “Persetujuan” dalam Pemendikbud Ristek No. 30 Tahun 2021 terhadap Fenomena Kekerasan Seksual di Lingkungan Pendidikan yang Dianggap sebagai Upaya Legitimasi Terhadap Perzinaan. *Jurnal Penegakan Hukum Dan Keadilan*, 3(1), 78-89.
- Rohmatul Anam. (2022). Hukuman Bagi Pelaku Tindak Pidana Kekerasan Seksual Di Kampus Dalam Perspektif Hukum Positif Dan Hukum Islam. *Ma'mal: Jurnal Laboratorium Syariah Dan Hukum*, 3(6).
- Salim Hs dan Erlies Septiana. (2013). *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*. PT Raja Grafindo Persada.
- Unaiza Niaz. (2003). *Violence Against Women in South Asian Countries*,” *Archives of Women’s Mental Health*.
- Undang-Undang No 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual*. (n.d.).
- Veratih Iskadi Putri. (2011). *Tinjauan Fikih Terhadap Bentuk Pemaksaan Hubungan Seksual Suami Kepada Istri*. UIN Syarif Hidayatullah Jakarta.