

Wives' Sexual Rights: Shāfi'ī Fiqh Norms and Indonesian Positive Law

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Abstract. Wives' sexual rights in marriage constitute a fundamental aspect of human dignity that remains problematic in the construction of classical Islamic jurisprudence and Islamic family law in Indonesia. In the Shāfi'ī school of fiqh, particularly as reflected in al-Muḥadzdzab by Abū Ishāq al-Shīrāzī, sexual intercourse (jīmā') is predominantly positioned as a prerogative right of husbands, while wives' sexual rights are neither explicitly articulated nor recognized as equal. In contrast, the Indonesian positive law through the Marriage Law, the Compilation of Islamic Law (KHI), the Law on Elimination of Domestic Violence, and the Law on Sexual Violence Crimes demonstrates a more progressive orientation by acknowledging wives' sexual rights as an integral component of the protection of human dignity and human rights. This study employed a normative legal approach with a content analysis of Shāfi'ī fiqh texts and a comparative analysis of the Indonesian positive law regulations. The findings revealed a normative gap between hierarchical classical fiqh and positive law that was oriented toward equality and the protection of women's bodily rights. The primary contribution of this article is found in its direct dialectical engagement between the Shāfi'ī fiqh norms and the Indonesian positive law, followed by a proposed reinterpretation of fiqh grounded in maqāṣid al-sharī'ah, which affirms wives' sexual rights as a reciprocal right in marriage. Furthermore, this article improves a concrete legal formulation by proposing a conceptual revision of nafkah bāṭin (intimate maintenance) in the Compilation of Islamic Law to encompass the proper fulfillment of wives' biological needs which are free from coercion and accompanied by clear legal consequences. Therefore, this study enriches the discourse on Islamic family law while offering a normative bridge between fiqh authority and the Indonesian positive law grounded in gender justice.

Keywords: Wives' Sexual Rights, Shāfi'ī Fiqh, Islamic Family Law, Maqāṣid al-Sharī'ah, Indonesian Positive Law.

Abstrak. Hak seksual istri dalam perkawinan merupakan dimensi fundamental dari martabat manusia, namun masih menjadi persoalan dalam konstruksi fikih klasik dan hukum keluarga Islam di Indonesia. Dalam mazhab Shāfi'ī, khususnya sebagaimana tercermin dalam al-Muḥadzdzab karya Abū Ishāq al-Shīrāzī, hubungan seksual (jīmā') secara dominan dikonstruksikan sebagai hak prerogatif suami, sementara hak seksual istri tidak dirumuskan secara eksplisit maupun diakui sebagai hak yang setara. Sebaliknya, hukum positif Indonesia – melalui Undang-Undang Perkawinan, Kompilasi Hukum Islam (KHI), Undang-Undang Penghapusan Kekerasan dalam Rumah Tangga, serta Undang-Undang Tindak Pidana Kekerasan Seksual – menunjukkan orientasi yang lebih progresif dengan mengakui hak seksual istri sebagai bagian integral dari perlindungan martabat manusia dan hak asasi manusia. Penelitian ini menggunakan pendekatan hukum normatif dengan analisis isi terhadap teks-teks fikih mazhab Shāfi'ī serta analisis komparatif terhadap peraturan hukum positif Indonesia. Temuan penelitian menunjukkan adanya kesenjangan normatif antara konstruksi fikih klasik yang bersifat hierarkis dan kerangka hukum positif yang berorientasi pada kesetaraan serta perlindungan atas otonomi tubuh perempuan. Kontribusi utama artikel ini terletak pada dialog dialektis secara langsung antara norma-norma fikih mazhab Shāfi'ī dan hukum positif Indonesia, yang kemudian diikuti dengan tawaran reinterpretasi fikih berbasis maqāṣid al-sharī'ah yang menegaskan hak seksual istri sebagai hak yang bersifat timbal balik dalam perkawinan. Selain itu, artikel ini juga mengajukan reformulasi hukum yang konkret melalui usulan revisi konseptual terhadap konsep nafkah bāṭin dalam Kompilasi Hukum Islam agar secara eksplisit mencakup pemenuhan kebutuhan biologis istri secara layak, bebas dari paksaan, serta disertai konsekuensi hukum yang jelas. Dengan demikian, penelitian ini memperkaya diskursus hukum keluarga Islam sekaligus menawarkan jembatan normatif antara otoritas fikih klasik dan hukum positif Indonesia yang berlandaskan pada prinsip keadilan gender.

Kata Kunci: Hak Seksual Istri, Fikih Mazhab Shāfi'ī, Hukum Keluarga Islam, Maqāṣid al-Sharī'ah, Hukum Positif Indonesia.

Submitted: 29 September 2025 | Reviewed: 15 October 2025 | Revised: 23 December 2025 | Accepted: 12 January 2026

INTRODUCTION

In Islam, marriage is understood not only as a formal or legal bond but also as an intimate relationship designed to cultivate tranquility (*sakinah*), affection and compassion (*mawaddah wa rahmah*), and the overall well-being of spouses. One crucial dimension of this relationship is the fulfillment of sexual needs.¹ Sexuality is not solely reproductive in function.² It also encompasses recreational and affective aspects, and its equitable fulfillment plays a significant role in maintaining marital harmony. However, in the classical fiqh tradition, particularly the Shāfi'ī school, the legal framework regarding sexuality tends to position wives primarily as an instrument for satisfying husbands' desires.³ The text of *al-Muhadzdzab* underscores that *jimā'* (sexual intercourse) constitutes a husband's right, which a wife is obligated to fulfill, without an explicit recognition that the wife similarly holds a corresponding sexual right.⁴

This situation reflects a normative imbalance rooted in a patriarchal social context in which classical fiqh was developed. Such inequality has resulted in the neglect of wives' sexual rights in a marital relationship even though the Qur'an emphasizes the principle of reciprocity through the concept of *mu'āsarah bi al-ma'rūf*⁵ and the metaphor of spouses as garments (*libās*)⁶ for each other. In contrast, the Indonesian positive law demonstrates progressive development with the enactment of the Law on Elimination of Domestic Violence (UU PKDRT) and the Law on Sexual Violence Crimes (UU TPKS), which emphasize that coercion into sexual relations constitutes violence and a violation of women's dignity.⁷

¹ الموسوعة الميسرة في فقه القضايا المعاصرة - فقه الأسرة, n.d., 305.

² Azmi Royal Aeni and Maulana Ni'ma Alhizbi, "Hak Istri Dalam Hubungan Seksual ...," *Usroh: Jurnal Hukum Keluarga Islam* 7 (2023): 27–40.

³ Ziinatul Millah, "Seks Dan Kuasa Dalam Hukum Islam: Studi Fiqh Seksualitas," *De Jure: Jurnal Hukum Dan Syar'iah* 9, no. 1 (2017): 13–29, <https://doi.org/10.18860/j-fsh.v9i1.4144>. Jihaan Fauziyah Rahman and Fahmi Fatwa Rosyadi Satria Hamdani, "Faktor-Faktor Penyebab Tingginya Angka Perceraian Di Kabupaten Purwakarta Tahun 2021-2023," *Jurnal Riset Hukum Keluarga Islam* 4, no. 2 (2024): 97–104.

⁴ Luh Made Khristianti Weda Tantri, "Perlindungan Hak Asasi Manusia Bagi Korban Kekerasan Seksual Di Indonesia," *Media Iuris* 4, no. 2 (2021): 145–72, <https://doi.org/10.20473/mi.v4i2.25066>. Tria Septi Wulani and Fahmi Fatwa Rosyadi Satria Hamdani, "Tinjauan Hukum Islam Terhadap Praktik Pembagian Harta Warisan Adat Suku Mandar," *Jurnal Riset Hukum Keluarga Islam* 2, no. 1 (2022): 1–7, <https://doi.org/10.29313/jrhki.vi.610>.

⁵ Q.S. An-Nisa: 19.

⁶ Q.S. Al-Baqarah: 187.

⁷ Trachel Fragma Sari, Nani Mulyati, and Siska Elvandari, "Pengaturan Tindak Pidana Perkosaan Dalam Perkawinan Menurut Hukum Pidana Indonesia Dan Hukum Pidana Singapura," *Delicti: Jurnal Hukum Pidana Dan*

The research gap is found in the absence of an explicit formulation that recognizes wives' sexual rights in both classical fiqh and the Compilation of Islamic Law (KHI). Previous studies have largely focused on gender biases in fiqh or the legal protection provided through legislation, yet few have engaged in direct dialectic between the two domains to develop a new formulation. Such formulation will affirm wives' sexual rights as equal to those of husbands, along with the corresponding legal consequences for their neglect.

Therefore, this study is framed around the following research questions: (1) How does Shāfi'ī fiqh position wives' sexual rights in marriage?; (2) How does the Indonesian positive law provide protection for wives' sexual rights?; and (3) What are the possibilities for developing a new formulation in fiqh and state family law that affirm wives' sexual rights as equal to those of husbands. The objectives of this study are: (1) to critically examine the construction of wives' sexual rights in Shāfi'ī fiqh; (2) to analyze the protection of such rights by the Indonesian positive law; and (3) to propose a new formulation in fiqh and the Compilation of Islamic Law (KHI) that place wives' sexual rights on an equal footing with husbands' while ensuring legal consequences for their neglect.

This article contributes to the scholarly discourse by bringing into direct dialogue the Shāfi'ī fiqh construction of marital sexual relations and the regulatory frameworks of Indonesian positive law. While previous studies primarily focus either on classical fiqh or on statutory provisions, this study explicitly foregrounds wives' sexual rights, an aspect that is often marginalized in both domains. By combining a content analysis of authoritative Shāfi'ī texts with an examination of contemporary legislation, this article not only reveals the gaps between normative tradition and modern law but also offers a novel reinterpretation grounded in *maqāṣid al-sharī'ah* and a reciprocity-based approach (*mubādalah*). This dual perspective highlights opportunities for harmonization and represents a new contribution to contemporary Islamic legal discourse on gender and family law.

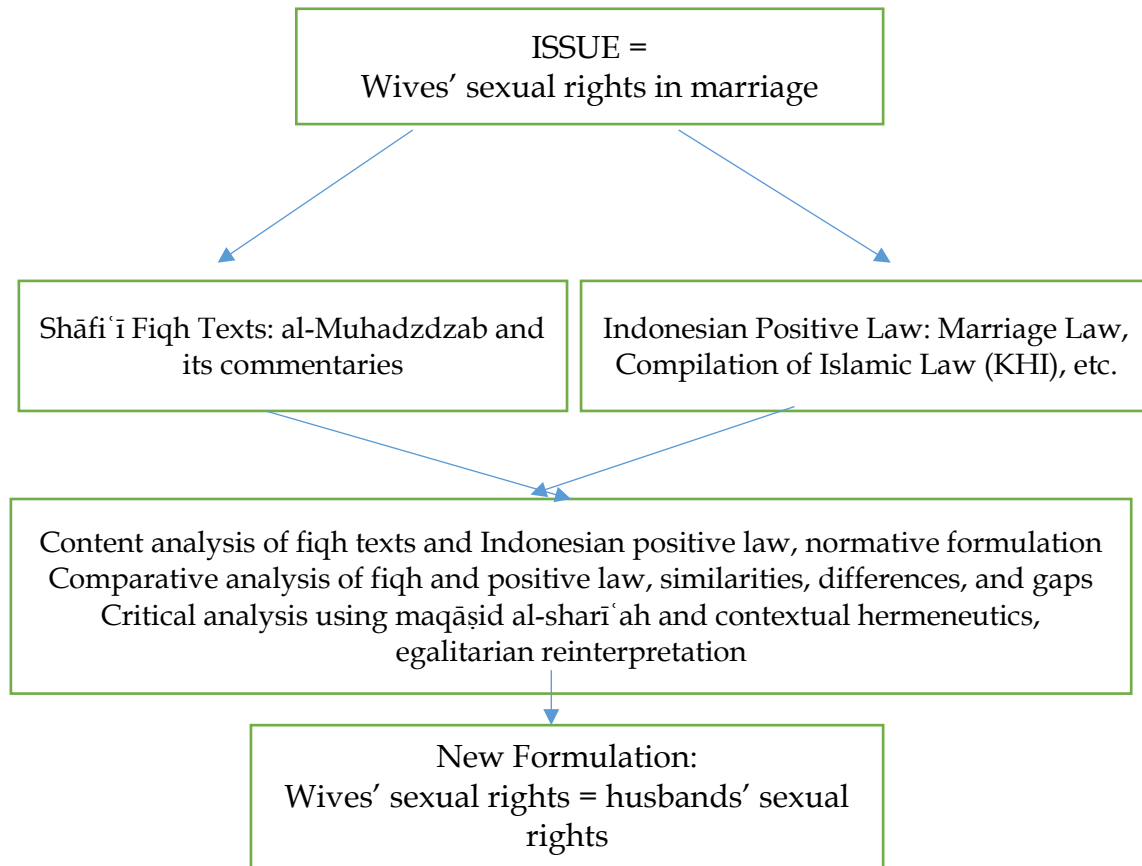
METHODOLOGY

This study employed a qualitative approach with a normative legal framework. Its primary focus was an analysis of classical Shāfi'ī fiqh norms as well as Indonesian positive law regulations related to wives' sexual rights. The normative approach was chosen because the issue under investigation originated from legal texts, including fiqh manuals and statutory regulations.

The study used both primary and secondary data obtained through a literature review. The primary sources included the authoritative Shāfi'ī fiqh texts, particularly *al-Muhadzdzab* by Abu Ishaq al-Syirazi, along with relevant commentaries (*sharah*). The Indonesian positive law sources included the Law No. 1 of 1974 on Marriage, Compilation of Islamic Law (KHI), Law No. 23 of 2004 on Elimination of Domestic Violence (UU PKDRT), and Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS). The secondary literature comprised previous studies, journal articles, and contemporary books on women's rights, gender equality, and maqāṣid al-sharī'ah theory.

The analysis was conducted in three stages. First, a content analysis was performed to identify how classical fiqh texts formulate sexual rights in marriage, particularly regarding the rights and obligations of spouses. Second, a comparative analysis was conducted to juxtapose the fiqh constructions with the Indonesian positive law norms, highlighting points of convergence, divergence, and gaps in the protection of wives' sexual rights. Third, a critical analysis based on maqāṣid al-sharī'ah and contextual hermeneutics was undertaken to propose a more equitable and balanced normative reinterpretation, including a new formulation in fiqh and KHI that recognize wives' sexual rights as equal to husbands' and establish legal consequences for their neglect. This study adopted a normative-doctrinal approach and was therefore not intended to replace empirical research; rather, it provided a conceptual and juridical framework that might serve as a foundation for future socio legal studies.

Through these steps, the study not only provided a descriptive analysis but also offered normative solutions relevant to the context of contemporary Indonesian family law.



RESULT AND DISCUSSION

1. Spousal Sexual Rights in Fiqh Norms

In the tradition of the Shāfi'ī school, discourse on sexual rights often refers to authoritative classical texts such as *al-Muhadzdzab* by Abu Ishaq al-Shirazi, which explicitly states that *jimā'* (sexual intercourse) is a right of a husband that he is not obligated to fulfill for his wife, except to the extent necessary to prevent harm (*dharar*).⁸ However, this view is not entirely monolithic when the development of thought among later Shāfi'ī scholars (*muta'akhkhirīn*) is traced. Imam al-Nawawi in *Minhāj al-Ṭālibīn* and Ibn Hajar al-Haytamī in *Tuhfat al-Muhtāj*, although maintaining the framework of husbands' sexual rights, begin to open space for discussing a husband's

⁸ Abdul Mukti Thabrani Afif Thohir Furqoni, "Islamic Legal Ethics to Marital Rape: Juxtaposing Mu'āsyarah Bi Al-Ma'rūf and Ḍarār Ma'nawī Principles," *Al-Aḥwāl: Jurnal Hukum Keluarga Islam* 15, no. 1 (2022): 135, <https://doi.org/10.14421/ahwal.2022.15107>.

moral obligation to safeguard his wife's 'iffah (chastity). Some Shāfi'ī scholars even grant a wife a *khiyār* right (the option to seek divorce) if her husband suffers from 'inrah (impotence) or is incapable of fulfilling her sexual needs, which implicitly acknowledges that a wife's sexual satisfaction is a fundamental right protected by the law even though its formulation has not yet been placed on equal footing with the rights of a husband.⁹

This article does not seek to negate the internal diversity in the Shāfi'ī school; rather, it positions *al-Muhadzdzab* as a dominant representation of classical discourse that is most frequently employed as a normative reference in the practice of Islamic family law in Indonesia.

Another fiqh norm states that:

أصل الوطء غير واجب لأنه حق للزوج إن شاء استوفاه وإن شاء تركه.¹⁰

This means that the essence of *jimā'* is not an obligation as it is considered a husband's right—he may choose to engage in it or not.

Several fiqh texts state that sexual relations are primarily recognized as a husband's right or a wife's obligation:

وَإِذَا دَخَلَ الرَّجُلُ بَأْمْرَاتِهِ كَانَ لَهُ أَنْ يَسْتَمْتَعَ بِهَا كَيْفَ شَاءَ، مَا لَمْ يَضُرَّهَا، وَلَيْسَ لَهَا أَنْ تَمْنَعَهُ مِنْ ذَلِكَ، لِأَنَّهُ حَقُّ لَهُ.

This means: "If a man has consummated marriage with his wife, he has the right to enjoy sexual relations with her as he wishes, provided it does not harm her. It is not permissible for the wife to refuse, as this constitutes his (the husband's) right."

لأن المعقود عليها من جهتها هو الاستمتاع فلا يلزمها ما سواه.¹¹

This means: "For the party who is married (the wife), what is required of her is only *istimta'* (sexual enjoyment); beyond that, nothing else is obligatory upon her."

وَيُحِبُّ عَلَى الزَّوْجَةِ تَسْلِيمَ نَفْسِهَا لَهُ عِنْدَ طَلْبِهِ، مَا لَمْ يَكُنْ يَضُرُّ، لِأَنَّ الْإِسْتِمْتَاعَ حَقُّ لَهُ.¹²

⁹ Mawardi, "Impotensi Sebagai Alasan Fasakh Nikah Menurut Ibnu Hazm Dan Al-Syirazi Dalam Kitab Al-Muhalla Dan Kitab Al-Muhadzab," *Al-Fikra: Jurnal Ilmiah Keislaman* 18, no. 2 (2019): 196, <https://doi.org/10.24014/af.v18.i2.7077>.

¹⁰ *Al-Mawsū'ah Al-Muyassarah Fī Al-Fiqh Al-Islāmī* (Beirut: Dār al-Nafā'is, 2003).

¹¹ Al-Mughni

¹² Fathul mu'in

This means: “It is obligatory for a wife to submit herself to her husband when requested, provided it does not cause harm, because *istimta’* (jimā‘) is a husband’s right.”

وَيَجِبُ عَلَى الْمَرْأَةِ تَمْكِينُ الرَّوْجِ مِنْ وَطْئِهَا مَتَى طَلَبَهُ، مَا لَمْ يَكُنْ لَهَا عُذْرٌ شَرْعِيٌّ...¹³

This means: “It is obligatory for a wife to allow her husband to have sexual intercourse with her whenever he desires, if she has no valid *shar’i* excuse...”

The classical fiqh paradigm emphasizes the maintenance of social stability through the regulation of men’s sexual desire. Consequently, husbands are positioned as a full rights-holder, while wives’ sexual needs receive no equivalent consideration.

From the perspective of Islamic legal methodology, this construction can be understood as the product of a literalist interpretation influenced by socio-historical conditions. However, when viewed through the lens of *maqāṣid al-sharī‘ah*, the orientation of the law should not only safeguard men’s stability but also uphold the principle of *mu‘āsyarah bi al-ma‘rūf* and the reciprocity of sexual rights as part of the protection of life (*hifz al-nafs*) and progeny (*hifz al-nasl*).¹⁴ In other words, *maqāṣid* requires *musyārah* (mutual participation and reciprocity) between a husband and a wife in fulfilling sexual needs. This emphasis on *musyārah* clearly contrasts with the asymmetrical formulation of classical fiqh, which positions husbands as a dominant subject and wives as an object of fulfillment.

The emphasis in the texts on husbands’ sexual rights and wives’ obligations reflect an underlying concern that unfulfilled men’s sexual desire may lead to social discord (*fitnah*). However, classical fiqh does not provide equivalent recognition of wives’ sexual rights, despite the Qur’an affirming a reciprocal relationship through the concept of *libās* (spouses as garments for one another). For this reason, the Shāfi‘ī fiqh norms articulated in *al-Muhadzdzab* require reinterpretation that considers *maqāṣid al-sharī‘ah* to affirm the reciprocity of sexual rights in marriage.

An analysis of the Shāfi‘ī school’s position therefore reveals a legal construction that privileges husbands’ interests in sexual relations. While the text of *al-Muhadzdzab*

¹³ Fathul qorib

¹⁴ Mutasir Mutasir and Wahyi Busyro, “Marital Rape in Indonesia in Maqashid Shari’ah Perspective,” *El-Aqwal: Journal of Sharia and Comparative Law* 2, no. 2 (2023): 104–5, <https://doi.org/10.24090/el-aqwal.v2i2.9340>.

foregrounds husband's rights, contemporary critiques open the possibility for reconstructing this understanding. If sexual relations are reframed as reciprocal rights, the broader purpose of marriage to realize *sakinah*, *mawaddah*, and *rahmah* would be more fully achieved. Therefore, it becomes crucial to connect classical fiqh norms with the progressive development in positive law, which is more responsive to the principles of equality and the protection of wives' rights in the sexual domain.

In classical *fiqh*, a marriage contract is often analogized to *tamlīk* (transfer of ownership) or *ibāḥah* (granting permission). Such analogies position a wife's body as an object to be owned or used, rather than as a subject possessing equal sexual rights.

¹⁵ This framework reinforces patriarchal structures and neglects the Qur'anic principle of *mu'āsarah bi al-ma'rūf* (living together in kindness and reciprocity). While these analogies may be understood in their historical context, contemporary legal discourse must reinterpret them to allow marriage to be conceived as a partnership that ensures a balanced distribution of rights and obligations.

2. Conceptualizing Wives' Sexual Rights: Between Morality and Legality

Before proceeding further, it is important to clarify what is meant by "wives' sexual rights" in this study. We categorize these rights into three dimensions. *First*, the biological dimension, namely wives' right to obtain sexual satisfaction (orgasm) and to experience safe reproductive health. *Second*, the psychological dimension, which frames intimate relations as a means of achieving *sakinah* (tranquility) and emotional validation, rather than merely serving as an outlet for husband's' desires. *Third*, the juridical dimension, which includes wives' right to demand the fulfillment of their sexual needs (*naḥkah bāṭin*) in court and their right to refuse sexual intercourse carried out with violence or without consent (marital rape).

Confusion often arises because classical fiqh treats these rights merely as moral recommendations (*sunnah*), while modern positive law seeks to incorporate them into

¹⁵ Royal Aeni and Ni'ma Alhizbi, "Hak Istri Dalam Hubungan Seksual" Rizki Ramadhan and Ilham Mujahid, "Analisis Faktor Penyebab Pernikahan Di Bawah Umur Di KUA Arcamanik Bandung," *Jurnal Riset Hukum Keluarga Islam*, 2024, 129–34, <https://doi.org/10.29313/jrhki.v4i2.5247>.

the realm of legal rights that can be formally claimed or contested.¹⁶ This categorization is intended to clearly distinguish between rights that are moral-ethical in nature and those that carry juridical consequences.

3. Protection of Wives' Sexual Rights in the Indonesian Positive Law

The protection afforded by the Indonesian positive law to wives' sexual rights in marriage is not only to prevent sexual violence,¹⁷ but also to ensure the fulfillment of wives' biological needs as an integral part of household welfare and justice. In this sense, state law plays a pivotal role in affirming that a wife's sexual rights are not merely moral or social concerns but constitute enforceable civil rights that a husband is obligated to uphold.

Law No. 1 of 1974 on Marriage stipulates that a husband and a wife are obliged to live harmoniously and lovingly, which implicitly encompasses the fulfillment of both material and spiritual needs, including sexual relations. This provision is reinforced by the *Kompilasi Hukum Islam* (Compilation of Islamic Law/KHI), which requires husbands to provide material and spiritual maintenance. Importantly, "spiritual maintenance" (*naḥkah bāṭin*) not only is confined to emotional care but also includes healthy and humane sexual relations. In addition, Article 19 of the Government Regulation No. 9 of 1975 provides a legal basis for wives to seek divorce if their husbands deliberately neglect these obligations. Therefore, the Indonesian civil law recognizes a wife's sexual rights as an integral component of marital duties that must be fulfilled by a husband.

Beyond civil law, the Indonesian positive law also provides protection through criminal law instruments. Law No. 23 of 2004 on Elimination of Domestic Violence (PKDRT) and Law No. 12 of 2022 on Sexual Violence Crimes (TPKS) explicitly classify forced sexual relations in marriage as a form of sexual violence.¹⁸ Moreover, the

¹⁶ Ahmad Imam et al., "Why Did Kompilasi Hukum Islam Succeed While Its Counter Legal Draft Failed? A Political Context and Legal Arguments of the Codification of Islamic Law for Religious Courts in Indonesia," *JOURNAL OF INDONESIAN ISLAM* 13, no. 2 (2019): 422–23, <https://doi.org/10.15642/JIIS.2019.13.2.421-453>.

¹⁷ Wahidah Zein Br Siregar and Ella Syafputri Prihatini, "Passing the Sexual Violence Crime Law in Indonesia: Reflection of a Gender-Sensitive Parliament?," *Politics and Governance* 12 (2024): 4, <https://doi.org/10.17645/pag.8245>.

¹⁸ Maharani Mustika Rahayu et al., "Perkembangan Perlindungan Hukum Perempuan Terhadap Kekerasan Seksual Di Indonesia," *Soedirman Law Review* 5, no. 2 (2023): 653, <https://doi.org/10.20884/1.slr.2023.5.2.176>.

neglect of *nafkah bāṭin* may be construed as psychological or economic violence, depending on its impact on wives' physical or mental well-being. These provisions underscore that wives' sexual rights cannot be disregarded whether through coercion or neglect as both forms contravene the principles of justice and household welfare.

These regulations affirm that sexual rights are not unilateral but mutual and must be exercised based on consent. Therefore, the Indonesian positive law provides concrete protection for wives while simultaneously addressing the normative gap in classical fiqh which does not explicitly impose upon husbands the obligation to fulfill their wives' sexual needs.

4. Normative Gaps and Social Implications

In the context of spousal rights and obligations, the normative discourse reveals two predominant currents of thought. The first is the traditional perspective, rooted in the authority of classical fiqh texts, which tends to situate marital relations in a hierarchical and patriarchal framework. The second is the modern perspective, which has emerged along with growing awareness of women's rights and the demand for greater gender equality in family law.¹⁹

A comparison between the Shāfi'ī fiqh and the Indonesian positive law reveals a paradigmatic gap. Classical fiqh emphasizes husbands' sexual rights in a hierarchical manner, whereas positive law underscores equality and the dignity of women. This tension arises because many Muslims continue to rely on classical fiqh, while the state enforces the principles of human rights. As Van Dorn observes, law functions as a scheme to regulate human behavior, yet lived realities often extend beyond such schemes.²⁰ In this context, fiqh doctrine and positive law operate in distinct frameworks.

The imbalance is not only a theoretical discourse but also clearly reflected in the realities of court proceedings in Religious Courts. Based on a review of the Supreme Court's Decision Directory, divorce cases filed on the grounds of *shiqāq* (continuous conflict) often stem from disharmony in sexual relations. Many divorce petitions filed by wives include the reason that "husbands have not provided *nafkah bāṭin* (sexual

¹⁹ Ahmad Tholabi Khalie, *Hukum Keluarga Indonesia* (Jakarta: Sinar Grafika, 2013), 249.

²⁰ Satjipto Rahardjo, *Membedah Hukum Progresif, Cet. 3* (Jakarta: Kompas, 2020), 4.

maintenance)” for months or even years. This jurisprudential fact underscores that while classical fiqh remains silent regarding wives’ sexual rights, social reality cries out for genuine legal protection. Judges in Religious Courts frequently invoke *taklik talak* or *dharar* as legal grounds to grant such petitions, demonstrating that, in practice, state law is compelled to fill the gap left by the textual limitations of classical fiqh.

Intimate relations should be understood as a space of affection and mutuality, as affirmed by the Qur’anic concept of *libās* (spouses as garments for one another). The Indonesian positive law reinforces this principle through Law No. 23 of 2004 on Elimination of Domestic Violence (PKDRT) and Law No. 12 of 2022 on Sexual Violence Crimes (TPKS), both of which recognize forced sexual intercourse in marriage as a form of violence. Even the neglect of *naḥkah bāṭin* can be categorized as psychological or economic abuse.

The fiqh maxim *al-jimā’ ḥaqqun li al-zawj, laisa bi wājibin ‘alayh* (“sexual intercourse is a husband’s right, not an obligation upon him”) essentially safeguards the husband’s entitlement to service, without providing explicit recognition of the wife’s corresponding rights. Other texts similarly affirm that a husband may enjoy his wife as he wishes *mā lam yaḍurraha* (so long as no harm befalls her) indicating that such rights are not absolute. However, the overall framework positions a wife in a passive and subordinate role. This underscores the need for a new fiqh formulation that affirms reciprocal rights to ensure that the fulfillment of sexual needs reflects *mu’āsharah bi al-ma’rūf* (living together in kindness) rather than unilateral service.

In contrast, the Indonesian positive law adopts a more egalitarian and rights-based approach. Both Law No. 1 of 1974 on Marriage and Law No. 23 of 2004 on Domestic Violence frame marital relations on the principles of love, mutual respect, and equality. A wife’s sexual rights are recognized as part of her bodily rights, encompassing the entitlement to healthy, pleasurable, and consensual sexual relations. Moreover, positive law establishes legal consequences for husbands who deliberately neglect conjugal intimacy, including the possibility of divorce proceedings or legal mediation.

Therefore, while the Indonesian positive law has paved the way for the protection of wives’ sexual rights, the normative gap with classical fiqh remains a persistent

challenge. The most viable pathway forward lies in a *maqāṣid al-sharī'ah* approach, which emphasizes the protection of life, dignity, and progeny. Through this lens, family fiqh can be reformulated in a manner that is more just, responsive, and consistent with the principles of equality and human rights.

5. Toward a Reinterpretation: *Maqāṣid al-Sharī'ah* and *Mubādalah* (Reciprocity)

Bridging the interpretive gap between classical fiqh, which tends to be hierarchical, and the Indonesian positive law, which is oriented toward equality, requires a process of reinterpretation. This can be achieved through the integration of two complementary approaches: *maqāṣid al-sharī'ah* and the theory of *mubādalah*.

The *maqāṣid* framework underscores that the fundamental purpose of Islamic law is to realize human welfare and safeguard human dignity, including women's biological rights. Meanwhile, the *mubādalah* paradigm emphasizes reciprocity and equality by positioning a husband and a wife as equal subjects in a marital relationship.²¹ By combining these approaches, classical fiqh texts originally interpreted in a unilateral manner can be re-read and reinterpreted to generate normative principles that affirm mutual and shared rights.

Maqāṣid al-sharī'ah emphasizes the protection of religion, life, intellect, lineage, and property. In this framework, the fulfillment of a wife's sexual needs falls under the protection of life (*ḥifẓ al-nafs*) and lineage (*ḥifẓ al-nasl*). Al-Shāṭibī, in *al-Muwāfaqāt*, underscores that the purpose of Islamic law is to secure human welfare (*maṣlaḥah*), not merely to replicate the literal formulations of legal texts. Therefore, while classical fiqh often situates wives in a subordinate position, the *maqāṣid* paradigm opens the possibility for new, more equitable interpretations.

Applying the *mubādalah* (reciprocity) perspective is not without theological and sociological challenges. In communities that still adhere firmly to a literal reading of the verse *al-rijālu qawwāmūna 'alā al-nisā'* ("men are protectors and maintainers of women"), the concept of sexual equality may be seen as a threat to the established

²¹ Faqihuddin Abdul Kodir, *Perempuan (Bukan) Sumber Fitnah! Mengaji Ulang Hadis Dengan Metode Mubadalah*. Cet. 2 (Bandung: Afkaruna, 2021), 3.

structure of household leadership. Critics often argue that equating wives' sexual initiative with that of husbands could undermine wives' obedience. Yet this is precisely where the urgency of reinterpretation lies. *Mubādalāh* does not seek to deconstruct the Sharī'ah, but rather to safeguard its very objectives (*maqāṣid*). If husband's leadership is understood as guardianship and care, then neglecting wives' sexual well-being constitutes a failure of leadership.

Therefore, the narrative of reciprocity is not a "Westernization" of family law, but a restoration of the Qur'anic spirit that has long been obscured by gender-biased interpretations. The *mubādalāh* approach is certainly not intended to eliminate all role differentiation in Islamic family jurisprudence; rather, it seeks to ensure that such differentiation does not result in the negation of the dignity and fundamental rights of either party.

Fazlur Rahman's theory of double movement further reinforces this hermeneutical approach. He argues that scriptural and legal texts should first be understood in their original historical context and then reactualized by considering contemporary socio-ethical demands.²² Classical fiqh statements that prohibit a wife from refusing her husband's sexual advances must therefore be read as products of a medieval patriarchal society that lacked the conceptual framework of gender equality. Through contextual hermeneutics, such texts are not dismissed but resituated, acknowledged in their historical setting and then reinterpreted for the present era. From this process emerges an understanding that sexual relations in marriage are reciprocal rights to be exercised with mutual consent and in full respect for the dignity of both partners.²³

The integration of *maqāṣid al-sharī'ah* and *mubādalāh* carries significant implications for the reform of family law in Indonesia. Positive law, such as Law No. 1 of 1974 on Marriage and Law No. 23 of 2004 on Elimination of Domestic Violence, already provides recognition of wives' sexual rights. However, normative formulations remain limited and do not explicitly affirm these rights as constituting part of

²² Muhammad Yusuf, Nahdhiyah Nahdhiyah, and Anwar Sadat, "Fazlur Rahman's Double Movement and It's Contribution to the Development of Religious Moderation," *IJISH (International Journal of Islamic Studies and Humanities)* 4, no. 1 (2021): 51, <https://doi.org/10.26555/ijish.v4i1.2667>.

²³ Eva Khumairoh, Ishaq Ishaq, and Muhammad Faisol, "Marital Rape As A Crime Of Sexual Violence In Positive Law In Indonesia," *International Journal of Law, Crime and Justice* 1, no. 2 (2024): 61, <https://doi.org/10.62951/ijlcj.v1i2.59>.

husbands' legal obligations. In this regard, the reformulation of the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI) becomes a crucial agenda.

For example, the Proposed Article X – Redefining *Nafkah Bāṭin* the KHI. Considering the existing legal gaps, the author proposes a concrete amendment to Article 80 paragraph (4) of the Compilation of Islamic Law (KHI). Previously, this article merely stated a husband's obligation to "provide maintenance," but it needs to include an explicit clause regarding the quality of sexual relations.

The proposed revised wording is as follows:

Article 80 paragraph (4) (Revised):

"According to his financial capacity, a husband is responsible for:

1. Providing maintenance, clothing, and a place of residence for his wife;
2. Covering household expenses, care expenses, and medical expenses for his wife and children;
3. Covering educational expenses for his children;
4. Providing appropriate *nafkah bāṭin*, which includes the fulfillment of his wife's biological needs in a manner consistent with *ma'rūf*, protection from sexual coercion, and safeguarding of reproductive health."
5. The addition of point (d) is crucial in shifting the paradigm of *nafkah bāṭin* from merely a "moral obligation" to a measurable "legal right." With the inclusion of the term "in a *ma'rūf* manner," judges are given a juridical basis to assess whether the quality of sexual relations in divorce disputes meets the standard of propriety or, conversely, constitutes a form of neglect (*nusyūz* by the husband).

Such provision would explicitly recognize wives' sexual rights in state law while simultaneously establishing juridical consequences for their neglect. This reconstruction of legal understanding is urgent to cultivate marital relationships that are healthy, harmonious, and aligned with the principles of *maṣlaḥah* and universal human dignity.²⁴

²⁴ Fajar Syarif, "The Contextual Interpretation of Polygamy Verses in the Qur'an," *Journal of Islamic Studies and Humanities* 5, no. 1 (2020): 3, <https://doi.org/10.21580/jish.v5i1.5212>.

To ensure that reform does not remain at the level of normative discourse, concrete steps for implementation are necessary:

1. Judicial guidelines. The Supreme Court could issue circulars or technical directives instructing judges in Religious Courts to interpret *naḥkah bāṭin* more comprehensively, including the fulfillment of wives' sexual rights.
2. Progressive fatwas. Religious institutions such as the Indonesian Ulema Council (MUI) or major Islamic organizations could issue fatwas that reinterpret classical fiqh texts through the frameworks of *maqāṣid al-sharī'ah* and *mubādalāh*.
3. Education and religious preaching. Friday sermons, religious curricula, and premarital counseling should emphasize the reciprocity of sexual rights. This is essential for shifting societal paradigms that continue to place wives in subordinate positions.
4. Strengthening the implementation of the Domestic Violence Law (Law No. 23/2004) and the Sexual Violence Prevention Law (Law No. 12/2022). Law enforcement officers must be trained to recognize that marital sexual coercion constitutes a legal violation even when perpetrated by a husband against his wife.
5. Empirical research. Data on the impacts of neglecting *naḥkah bāṭin* should be systematically collected to support legal advocacy and inform public policy.

The reinterpretation of fiqh through *maqāṣid* and *mubādalāh* is likely to encounter resistance from some religious scholars who view such efforts as contravening textual authority. Accordingly, the most effective strategy is to foreground theological arguments rather than relying solely on human right discourse. Religious scholars need to be convinced that principles of justice (*'adl*), compassion (*raḥmah*), and public welfare (*maṣlaḥah*) are fundamental to Islam. Furthermore, sustained dialogue between academics, religious institutions, and the state is indispensable for ensuring that family law reform secures both social and political legitimacy.

Ultimately, the reinterpretation of Islamic legal norms through the dual lens of *maqāṣid al-sharī'ah* and *mubādalāh* offers a pathway out of patriarchal bias embedded in classical understandings of sexual rights in marriage. This approach does not reject

the sacred texts but rather reads them contextually and progressively to foreground values of reciprocity and justice. Reformulating the Compilation of Islamic Law (KHI) and strengthening positive legal instruments are therefore crucial steps to ensure that wives' sexual rights are explicitly recognized and legally protected. With the concerted support of the state, religious authorities, and society at large, these rights can become an integral part of the legal protection system rather than remaining a mere normative discourse.

6. The Relevance of Legal Philosophy in Contemporary Contexts

In the discourse of Islamic legal philosophy (*Maqāṣid al-Sharī'ah*), discussions on sexuality are often reduced merely to the aspect of *ḥifẓ al-nasl* (preservation of lineage). However, this article proposes a paradigm reorientation: the fulfillment of wives' sexual rights is more closely aligned with the domains of *ḥifẓ al-nafs* (protection of life/psyche) and *ḥifẓ al-'ird* (protection of dignity and honor).

Positioning sexual rights in the framework of *ḥifẓ al-nafs* emphasizes that intimate relations are not merely biological or reproductive activities, but fundamental needs directly connected to a wife's psychological stability and mental well-being. Neglecting these needs, or imposing sexual relations in a manner that causes trauma (*dharar*), directly harms the sanctity of the human soul that must be protected. In this context, sexual pleasure and satisfaction become instruments for achieving inner tranquility (*sakinah*), the very essence of protecting the human psyche.

Furthermore, wives' sexual rights strongly intersect with *ḥifẓ al-'ird* (protection of dignity). In a contemporary context, preserving dignity can no longer be understood only as "protecting a wife from adultery," but must also encompass respect for her bodily autonomy. A wife who possesses agency and a voice over her own body embodies the elevation of human dignity. Therefore, *ḥifẓ al-nasl* in this view is not an independent primary objective; rather, it is a logical outcome that can be achieved with quality only when wives' *ḥifẓ al-nafs* and *ḥifẓ al-'ird* are fully upheld.

This relevance becomes even more pronounced in contemporary contexts where awareness of women's bodily autonomy is increasing. A legal philosophy that separates "the right to claim" (legal) from "the duty to serve" (moral), as found in

classical fiqh, becomes inadequate when confronted with the Sexual Violence Crimes Law (UU TPKS), which criminalizes sexual coercion in marriage. Therefore, integrating *mubāḍalah* (reciprocity) into the philosophy of family law is no longer a liberal option, but an urgent necessity to maintain the relevance of Islamic law in the modern public sphere. In this framework, the state is not only responsible for maintaining public order but also bears both a moral and juridical mandate to ensure that every citizen including women in marriage is protected from practices that undermine their dignity.²⁵

Modern legal philosophy, particularly Immanuel Kant's conception of law as the guardian of human freedom and dignity, offers a critical foundation for discussing wives' sexual rights. Kant emphasizes that human beings are rational and autonomous agents; therefore, freedom is a universal moral requirement (*kategorischer Imperativ*) that must never be violated.²⁶ Coercive or unilateral sexual relations directly contravene this principle of freedom and human dignity.

In this framework, the state is not only responsible for maintaining public order but also bears both a moral and juridical mandate to ensure that every citizen including women in marriage is protected from practices that undermine their dignity.²⁷ This philosophical stance resonates with the objectives of *maqāṣid al-sharī'ah*, particularly *ḥifẓ al-naḥs* (protection of life) and *ḥifẓ al-'ird* (protection of honor). Both principles affirm that fulfilling wives' biological needs and safeguarding them from coercion are integral to the higher aims of Islamic law.

In the framework of Indonesian positive law, the integration of values of freedom and reciprocity can be realized through more operational instruments.²⁸ The thought of Roscoe Pound is particularly relevant in explaining this policy direction. According to

²⁵ "CEDAW General Recommendation No. 19: Violence against Women," *Археология* 1, no. August (1993): 117–25, https://www.refworld.org/legal/resolution/cedaw/1992/en/96542?utm_source=chatgpt.com.

²⁶ Bernard L. Tanya, Yoan N. Simanjuntak, and Markus Y. Hage, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang Dan Generasi, Cet. IV* (Yogyakarta: Genta Publishing, 2013), 69.

²⁷ "CEDAW General Recommendation No. 19: Violence against Women," *Археология* 1, no. August (1993): 117–25.

²⁸ Hjh Norhartijah and Cecep Soleh Kurniawan, "Reforming Islamic Family Law in Southeast Asia : A Comparative Study of Indonesia , Malaysia , and Brunei Darussalam Introduction This Report Provides a Comprehensive Analysis of the Reform Trajectories within Islamic Family Law across Three Key Southeast" 2, no. 1 (2025): 9, <https://doi.org/10.19105/ajisc.vX1iX.XXXX>.

Pound, law is not merely a normative device but a tool of social engineering, an instrument to regulate interests, prevent conflict, and shape social behavior.²⁹ From this perspective, implementing such measures as premarital education based on gender equality, religious fatwas affirming wives' sexual rights, and strengthening of law enforcement capacity in handling cases of domestic and sexual violence should not be regarded as mere technical policies. Rather, they represent deliberate efforts by the state and religious institutions to reshape household relations toward greater equality. For example, the premarital counseling module issued by the Ministry of Religious Affairs could be revised to incorporate the perspective of sexual reciprocity, while the Indonesian Ulema Council (MUI) could issue progressive fatwas declaring that coerced sexual relations in marriage contravene the Qur'anic principle of *mu'āsarah bi al-ma'rūf* (living together in kindness). In Pound's view, such measures constitute concrete expressions of the role of law in directing social changes toward the creation of order, justice, and family well-being. Therefore, the consistent application of law should not be confined to preserving formal order but should also embody the broader vision of law as an instrument of social justice.

The limited recognition of wives' rights to sexual pleasure in classical fiqh literature further illustrates the gender bias embedded in historical constructions of Islamic law. Many legal text, particularly in the Shāfi'ī school, emphasize a wife's obligation to provide sexual services to her husband without explicitly affirming her reciprocal rights. This omission reflects the patriarchal structure of medieval Muslim societies, in which legal discourse was overwhelmingly shaped by male scholars and excluded women lived experiences. As a result, fiqh texts have tended to privilege husbands as primary holders of sexual rights, while marginalizing wives' entitlements. Such critique is crucial, yet it must also be directed toward constructive reconstruction to ensure that fiqh evolves to prevent the continued reproduction of structural injustice in the marital sphere.

In contemporary scholarship, modern Muslim thinkers such as Faqihuddin Abdul Kodir, through his theory of *mubādalah* (reciprocity), emphasize the importance of re-reading

²⁹ Roscoe Pound, "Roscoe Pound, An Introduction to the Philosophy of Law [1930]," 2010, 30–31.

fiqh texts in a framework of equality, mutuality, and cooperation.³⁰ The Qur'an itself affirms this principle of reciprocity through the concept *hunna libāsun lakum wa antum libāsun lahunna* (Q. al-Baqarah 2:187), portraying marital relations as spouses being “garments” for one another that are mutually protective, comforting, and dignifying. Based on this, sexual relations should not be construed as a unilateral obligation imposed on wives, but rather as a reciprocal right built upon love, consent, and respect.

The relevance of this issue is further reinforced when situated in the framework of international human rights. Indonesia has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) through Law No. 7 of 1984, thereby committing itself to eliminating discrimination in marriage and family relations, including in the sexual domain. Protecting wives' sexual rights is therefore not only a moral and religious duty but also a binding international legal obligation. The persistence of divorce petitions in Religious Courts on the grounds of neglected sexual needs highlights the urgent necessity of fulfilling this obligation in practice.

The gap between gender-biased classical fiqh and the more egalitarian orientation of positive law must be bridged through normative reinterpretation. Fiqh requires reformulation through the combined application of *maqāṣid al-sharī'ah* and contextual hermeneutics to align with the principle of reciprocity. Concretely, for example, the Compilation of Islamic Law (KHI) could be amended to include explicit provisions recognizing that *nafāqah bāṭin* (intimate maintenance) encompasses wives' sexual rights, which husbands are obliged to fulfill fairly and proportionately. Such provisions could be further reinforced by stipulating that neglect of wives' sexual rights constitutes a legitimate ground for divorce and may be classified as a form of psychological violence. This amendment would not only clarify normative standards but also provide legal certainty for women.

Further implementation measures require strengthening the synergy between legal institutions, religious authorities, and civil society. Legal practitioners and law enforcement officers should receive training on gender-sensitive approaches in addressing cases of domestic and sexual violence. Religious institutions are

³⁰ Faqihuddin Abdul Kodir, *Perempuan (Bukan) Sumber Fitnah! Mengaji Ulang Hadis Dengan Metode Mubadalah*, Cet. 2.

encouraged to actively promote progressive fatwas and interpretations that affirm sexual reciprocity. Meanwhile, civil society organizations can play a strategic role in public education and in providing support for women whose rights are neglected.

Taken together, Kantian legal philosophy, the objectives of *sharī'ah* (*maqāṣid*), Qur'anic principles of reciprocity, Indonesian positive law, and international human rights obligations can be woven into a unified normative and practical foundation for the protection of wives' sexual rights. Such reconstruction of fiqh does not negate tradition; rather, it revitalizes Islamic core values of justice, compassion, and human welfare. At the same time, it reinforces the Indonesian positive law as a system responsive to women's needs in marriage and ensures that wives' sexual rights are recognized as fundamental rights safeguarded by the religion, the state, and the society.

7. Global Contextualization and Concrete Steps.

This reform effort is not new in the Muslim world. Looking at our regional neighbor, Malaysia through the Islamic Family Law (Federal Territories) Act 1984 has long provided space for Shariah judges to assess “mental cruelty,” which includes the neglect of sexual intimacy.³¹ Morocco, with its progressive *Moudawana*, has taken similar steps.³² Indonesia lags behind because the KHI still lacks explicit provisions regarding the *quality* of sexual relations, thus limiting itself only to the general obligation of *nafkah bāṭin*.

Therefore, in addition to revising the KHI, a more tactical strategy is to urge the Supreme Court to issue a Supreme Court Regulation (PERMA) on the Guidelines for Adjudicating Religious Civil Cases with a Gender Perspective. Such PERMA should provide judges with clear guidance that *nafkah bāṭin* must be interpreted not merely as “not abandoning wives’,” but as “fulfilling wives’ biological needs in a proper manner.” This procedural step would have a much faster impact than waiting for legislative amendments, which are inherently political and slow moving.

³¹ Islamic Family Law, “Act 303 ISLAMIC FAMILY LAW (FEDERAL TERRITORIES) ACT 1984” (2006), 36–37, <https://learningpartnership.org/sites/default/files/resources/pdfs/Islamic-Family-Law-Malaysia-1984.PDF>.

³² About Us, “The Moroccan Family Code (Moudawana) of February 5, 2004” (2004), 34, [https://learningpartnership.org/sites/default/files/resources/pdfs/Morocco Family Code %28Moudawan%29 2004 English.pdf](https://learningpartnership.org/sites/default/files/resources/pdfs/Morocco%20Family%20Code%28Moudawan%29%202004%20English.pdf).

CONCLUSION

Based on the above discussion, this study draws three main conclusions. *First*, regarding fiqh norms, the Shāfi'ī school's view of wives' sexual rights is not entirely monolithic. Although classical texts such as *al-Muhadhdhab* position *jimā'* as the husband's prerogative, an examination of later scholarly literature (*muta'akhkhirīn*), including the works of al-Nawawī and Ibn Ḥajar, reveals an implicit recognition of a wife's rights through the mechanism of *khiyār* (the option to seek divorce) when her husband is unable to fulfill her sexual needs. This indicates that a wife's satisfaction is an important variable, even if it has not yet been formulated on equal footing with a husband's rights.

Second, the Indonesian positive law through the Marriage Law, the Law on the Elimination of Domestic Violence (PKDRT), and the Sexual Violence Crimes Law (TPKS) has progressed by situating wives' sexual rights in the framework of human rights protection. State law no longer regards sexuality merely as an instrument of procreation (*ḥifẓ al-nasl*), but as an integral component of the protection of life (*ḥifẓ al-nafs*) and dignity (*ḥifẓ al-'ird*). This is evident in the criminalization of sexual coercion in marriage, which is considered harmful to wives' mental health and dignity, a perspective that exceeds the boundaries of classical fiqh.

Third, as an effort toward legal harmonization and reform, both philosophical and juridical reorientation are required. Philosophically, the concept of *mubādalah* (reciprocity) must be integrated to affirm that the ultimate purpose of marriage is inner tranquility (*sakinah*), which can only be achieved if wives' bodily autonomy is respected. Juridically, this study recommends revising Article 80 paragraph (4) of the Compilation of Islamic Law (KHI) by adding an explicit clause stating that *nafkah bāṭin* must include the proper and voluntary fulfillment of wives' biological needs, to provide gender-just legal certainty.

ACKNOWLEDGMENTS

The authors would like to express their sincere gratitude to the academic advisors who have provided valuable guidance and constructive feedback, without which the completion of this article would not have been possible.

COMPETING INTEREST

The authors declare that there is no conflict of interest regarding the publication of this article.

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