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CRIMINALIZING MARITAL RAPE IN INDONESIA

LEAH RIGGINS*

VIOLENCE AGAINST WOMEN IN ASIAN SOCIETIES. Edited by Lenore Manderson and Linda Rae Bennett. New York: Routledge 2003. Pp. 194.

Abstract: *Violence Against Women in Asian Societies* examines cultural and other factors affecting women's experiences of violence in south and southeast Asia through a collection of essays. One particular essay on marital violence in Indonesia focuses on legal, political, and cultural constructions of marital rape. Indonesian wives currently face marital rape with no possibility of legal protection from their husbands. This Book Review argues that marital rape should be criminalized in Indonesia, and that this can be achieved by applying an individual rights approach to violence against women. Indonesian women's organizations are currently working to increase public awareness and to pass legislation on violence against women, but marital rape will neither be criminalized nor punished until legislators and the public acknowledge women's individual rights within marriage.

INTRODUCTION

In *Violence Against Women in Asian Societies*, Lenore Manderson and Linda Rae Bennett bring together a collection of anthropological essays about domestic violence and sexual violence against women in South and Southeast Asia.¹ The authors base each essay on case studies completed in a particular country.² The unifying theme of these essays is the intersection of cultural ideas of honor, shame, and the sexual purity of women to sustain gender inequality and justify violence against women.³ In the countries examined, men think of women as male property, mistreating and abusing them.⁴

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¹ Linda Rae Bennett & Lenore Manderson, *Introduction: Gender Inequality and Technologies of Violence*, in VIOLENCE AGAINST WOMEN IN ASIAN SOCIETIES 1, 4 (Linda Rae Bennett & Lenore Manderson eds., 2003).

² *Id.* at 12–19.

³ *Id.* at 9.

⁴ *Id.* at 10.

This Book Review focuses on an essay by anthropologists Nurul Ilmi Idrus and Linda Rae Bennett, "Presumed Consent: Marital Violence in Bugis Society," which discusses marital violence, including rape and sexual assault, in the Bugis ethnic community in Indonesia.⁵ The authors argue that men's presumption of sexual entitlement within marriage both reflects and reinforces cultural constructions of gender inequality.⁶ Factors supporting marital violence within Bugis society include the state's institutionalization of gender inequality, popular interpretations of Islamic law, and local culture and tradition.⁷ Indonesian law does not currently criminalize marital rape or domestic violence.⁸ Idrus and Bennett argue that the legal construction of rape makes the act merely an "ethical crime" rather than a crime against an individual, which indicates that the rights of individual women are secondary to moral and ethical concerns of social behavior.⁹ Ideas about women's sexuality, and therefore ideas about non-marital and marital rape in Bugis society, originate in concepts of gender, shame, and family honor, rather than women's rights and individuality.¹⁰ Furthermore, the authors suggest that if legislation were to focus on women's individual human rights by defining rape as a crime against a person, this would challenge husbands' sexual entitlement to their wives, and the idea—and punishment—of marital rape would become a legal possibility.¹¹

This Book Review investigates Idrus's and Bennett's assertion that the way to achieve criminalization of marital rape in Indonesia is to address the problem through an individual rights perspective.¹² The modern U.S. movement to criminalize marital rape, which provides an instructive comparison, has employed several theoretical approaches, but arguments based on individual rights will be the most effective in

⁵ Nurul Ilmi Idrus & Linda Rae Bennett, *Presumed Consent: Marital Violence in Bugis Society*, in *VIOLENCE AGAINST WOMEN IN ASIAN SOCIETIES*, *supra* note 1, at 41, 41. Indonesia currently has 180 million citizens, belonging to nearly 300 linguistic groups and many ethnic groups. United Nations Development Programme, *About Indonesia*, at http://www.undp.or.id/general/about_culture.asp (last visited Nov. 15, 2003). More than 85% of the population is Muslim. *Id.* The Bugis ethnic group lives in South Sulawesi. *Id.*

⁶ Idrus & Bennett, *supra* note 5, at 41.

⁷ *See id.*

⁸ *Id.* at 45.

⁹ *Id.* at 46.

¹⁰ *See id.* at 46, 47.

¹¹ Idrus & Bennett, *supra* note 5, at 46.

¹² *See id.* Governments should criminalize all forms of violence against women, including marital rape and other forms of domestic violence, with appropriately serious penalties. Human Rights Watch, *What Will It Take? Stopping Violence Against Women: A Challenge to Governments*, HUM. RTS WATCH BACKGROUNDER (June 2000), at <http://www.hrw.org/backgrounder/wrd/fiveplus.htm>.

the Indonesian cultural context.¹³ The value and utility of the individual rights approach is not just its power to prompt legislative change. Even if individual rights arguments do not achieve the goal of criminalizing marital rape in the near future, the issues that the approach will publicize, the principles that it will begin to establish, and the attendant social and other legal impacts are as important as criminalization itself.¹⁴

Part I of this Book Review provides a closer look at the themes in *Violence Against Women in Asian Societies*. Part II examines Idrus's and Bennett's findings on the adverse impact of marital rape and other forms of marital violence on the health of Indonesian women, supporting the conclusion that legal steps must be taken to ensure reform.¹⁵ Part III explores approaches taken by proponents of the criminalization of marital rape in the United States, including attacking marital rape as a violation of women's individual human rights to bodily integrity, which could succeed in the Indonesian context.¹⁶ Part IV argues that the individual rights approach will have positive effects in Indonesia. Part V analyzes recent steps toward criminalizing marital rape in Indonesia, as well as the current climate for accepting such changes, by looking at legislative developments, suggestions made by international human rights organizations, and the work of the United Nations (UN) Special Rapporteur on Violence Against Women, who has called for changes to Indonesian laws and a more responsive criminal justice system.¹⁷ This Book Review concludes that only an individual rights approach to violence against women can achieve the criminalization of marital rape in Indonesia.

¹³ See Jill Elaine Hasday, *Contest and Consent: A Legal History of Marital Rape*, 88 CAL. L. REV. 1375, 1491–1505 (2000) (discussing modern U.S. arguments for criminalizing marital rape); *infra* notes 84–91 and accompanying text (arguing that the individual rights approach will be effective in Indonesia).

¹⁴ See Bennett & Manderson, *supra* note 1, at 10 (mentioning the need to disturb long-standing community silences about violence against women); Hasday, *supra* note 13, at 1375 (noting the partial success of American feminists in criminalizing marital rape); Idrus & Bennett, *supra* note 5, at 53 (explaining the current lack of social support for women who experience marital rape).

¹⁵ See Idrus & Bennett, *supra* note 5, at 58.

¹⁶ See Hasday, *supra* note 13, at 1494.

¹⁷ Radhika Coomaraswamy, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*, U.N. ESCOR, Commission on Hum. Rts., 59th Sess., addendum 1, Provisional Agenda Item 12(a), ¶ 996, U.N. Doc. E/CN.4/2003/75/Add.1 (2003); Human Rights Watch, *supra* note 12.

I. VIOLENCE AGAINST WOMEN: COMMON THEMES IN SOUTH AND SOUTHEAST ASIAN COUNTRIES

The authors of the essays in *Violence Against Women in Asian Societies* share a common goal of contributing to an understanding of direct, indirect, and structural violence against women in specific cultural contexts.¹⁸ Direct violence includes domestic violence, marital rape, stranger rape, acquaintance rape, sexual harassment, and verbal, emotional, and psychological abuse.¹⁹ Indirect violence includes the use of fear to control women in domestic violence situations, the impact of social violence such as gossip, and the effects of terror enforced by the state and military.²⁰ Structural violence includes the multiple disadvantages that women experience as a result of their gender, age, poverty, and ethnicity.²¹ Due to the interconnectedness of these categories of harmful behavior, an attempt to describe each separately in a given situation would provide an incomplete understanding of violence against women.²² Direct violence does not exist by itself—it is enabled by indirect violence and structural violence, and it is this interconnected relationship that many of the authors of the essays explore.²³

One important theme in *Violence Against Women in Asian Societies* is the way rules and norms about women's place in the family and in society contribute to the prevalence of marital violence in those societies.²⁴ In their essay on marital rape in Indonesia, Idrus and Bennett focus on the interplay between honor, shame, and sexual purity and their use to justify marital violence.²⁵ Structural violence in the form of state gender ideology and indirect violence in the form of gossip and shame by neighbors are two of the factors that affect women's experiences of the direct violence of marital rape.²⁶ Similarly, in Cambodia, a woman's sexuality is seen as the manifestation of her family's honor.²⁷ If a man rapes a woman outside of marriage, the way to restore her honor is for

¹⁸ Bennett & Manderson, *supra* note 1, at 2–3.

¹⁹ *Id.* at 2.

²⁰ *Id.* at 3.

²¹ *See id.*

²² *See id.* at 2–3.

²³ *See* Bennett & Manderson, *supra* note 1, at 3; Idrus & Bennett, *supra* note 5, at 53.

²⁴ *See* Idrus & Bennett, *supra* note 5, at 41–42; Rebecca Surtees, *Rape and Sexual Transgression in Cambodian Society*, in *VIOLENCE AGAINST WOMEN IN ASIAN SOCIETIES*, *supra* note 1, at 93, 97–98.

²⁵ Idrus & Bennett, *supra* note 5, at 41–42.

²⁶ *See id.* at 43–45, 53.

²⁷ Surtees, *supra* note 24, at 105.

him to marry her.²⁸ Forced marriage, however, is itself a form of violence against women, especially where a woman marries someone who has sexually assaulted her and may do so again.²⁹

Another important theme that the essayists explore is the lack of legal recourse for women who experience violence in societies that assume male superiority or dominance within the marital relationship.³⁰ One essay describes arranged marriage among Muslim Maranaos in the Philippines as a form of marital violence and notes the requirement that wives submit to their husbands' authority.³¹ The betrothal process may include direct violence as well as indirect violence against women due to their role as trustees of family honor.³²

The book as a whole aims to break the silence about violence against women, and the issue of individual women's silence and social silence plays a part in almost every chapter.³³ One essay discusses state power and self-censorship, which keeps women's organizations in Malaysia from encouraging public debate on issues such as contraception for single women, reproductive rights, abortion, and marital rape.³⁴ Idrus and Bennett incorporate all of these themes into their discussion of marital violence in the Indonesian cultural context.³⁵

II. MARITAL RAPE IN INDONESIA

Idrus and Bennett highlight Bugis silence about marital rape and begin to break that silence by conducting their own research.³⁶ There are currently no reliable statistics on the prevalence of marital rape and marital violence in Indonesia.³⁷ The Indonesian State Ministry for

²⁸ *Id.* at 106.

²⁹ *See id.* at 106–08. Younger women in a study in the Philippines said, “[F]orcing us into marriage is violence.” Anne-Marie Hilsdon, *Violence Against Maranao Muslim Women in the Philippines*, in *VIOLENCE AGAINST WOMEN IN ASIAN SOCIETIES*, *supra* note 1, at 20, 20.

³⁰ *See* Hilsdon, *supra* note 29, at 20, 23, 28–29; Idrus & Bennett, *supra* note 5, at 48; Surtees, *supra* note 24, at 97.

³¹ Hilsdon, *supra* note 29, at 20, 23.

³² *See id.* at 20, 23.

³³ *See* Bennett & Manderson, *supra* note 1, at 10; Rebecca Foley, *Violence Against Women: The Challenges for Malaysian Women*, in *VIOLENCE AGAINST WOMEN IN ASIAN SOCIETIES*, *supra* note 1, at 130, 135; Idrus & Bennett, *supra* note 5, at 50.

³⁴ Foley, *supra* note 33, at 135.

³⁵ *See* Idrus & Bennett, *supra* note 5, at 41–42 (discussing women's place in the family and society), 48–51 (discussing the assumption of male authority and the silencing of women who experience rape).

³⁶ *Id.* at 42, 50.

³⁷ *See* Coomaraswamy, *supra* note 17, ¶ 996. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee showed concern for Indonesia's failure to collect information on the occurrence of violence against Indonesian women.

the Role of Women reports that it is difficult to obtain accurate data on rape and violence against women, in part because victims are reluctant to report incidents.³⁸ Despite underreporting, marital rape unquestionably has an enormous impact on the lives of women who experience it.³⁹ Nurul Ilmi Idrus performed in-depth case studies with thirty married Bugis women who had experienced sexual violence in marriage as well as other forms of marital violence.⁴⁰ These women were reluctant to call sexual abuse by their husbands violence, but five women did use the word rape when referring to forced sex in marriage.⁴¹ Idrus and Bennett found that marital rape and sexual abuse were never the only types of violence used by a husband; all of the women in their study who experienced sexual violence within marriage also experienced other forms of marital violence.⁴²

Marital rape and other forms of violence have a significant impact on the mental health of Bugis women, who report constant fear, depression, and low self-esteem.⁴³ Marital rape can be even more traumatic for its victims than rape occurring outside the context of

Id. By way of comparison, the best available statistics on marital rape in the United States suggest that one out of every seven or eight married women has been subject to rape or attempted rape by her husband. Hasday, *supra* note 13, at 1496. If Idrus and Bennett are correct that Indonesian state and religious ideologies and cultural constructions create a particularly enabling environment for marital violence, then the percentage of women experiencing marital rape in Indonesia may be much higher. See Idrus & Bennett, *supra* note 5, at 58. Women's organizations in fourteen regions of Indonesia handled 3169 cases of violence against women in 2001, 40% of which were categorized as domestic violence and 32% of which were categorized as rape. NAT'L COMM'N ON VIOLENCE AGAINST WOMEN, FAILED JUSTICE AND IMPUNITY: THE INDONESIAN JUDICIARY'S TRACK RECORD ON VIOLENCE AGAINST WOMEN 4 (2002) [hereinafter FAILED JUSTICE], available at <http://www.komnasperempuan.or.id/publikasi.asp> (last visited Nov. 20, 2003).

³⁸ STATE MINISTRY FOR THE ROLE OF WOMEN OF THE REPUBLIC OF INDON., INDONESIAN COUNTRY REPORT ON THE IMPLEMENTATION OF THE NATIONAL PLAN OF ACTION TO THE FOLLOW-UP TO THE BEIJING PLATFORM FOR ACTION 9 (1999), available at <http://www.un.org/womenwatch/daw/followup/Indonesia.pdf> (last visited Apr. 6, 2004). The ministry attributes this reluctance to a belief that rape and marital violence are a disgrace to the victim's family. *Id.*

³⁹ See Idrus & Bennett, *supra* note 5, at 49–52 (describing the combination of sexual violence and physical violence experienced by women in their study, as well as its effects on women's mental health).

⁴⁰ *Id.* at 42.

⁴¹ *Id.* at 50.

⁴² *Id.* at 49–50.

⁴³ *Id.* at 52. This data is supported by cross-cultural studies in which women who have experienced sexual and physical violence within marriage report persistent fear and disturbance by violent images. *Id.* In a U.S. study, victims of marital rape suffered from prolonged periods of depression, lower self-esteem, frequent flashbacks and nightmares, and fear of intimacy. RAQUEL KENNEDY BERGEN, WIFE RAPE: UNDERSTANDING THE RESPONSE OF SURVIVORS AND SERVICE PROVIDERS 59–60 (1996).

marriage, since victims of marital rape experience the additional traumas of betrayal, entrapment, and isolation.⁴⁴ The impact of marital rape on Indonesian women provides a strong argument for the criminalization of marital rape, based on its occurrence in combination with other forms of marital violence, its effects on women's mental health, and its heightened trauma due to its marital context.⁴⁵

Despite its impact on Indonesian women's lives, marital rape is not a crime under the Indonesian Criminal Code.⁴⁶ The Code defines rape as an act of forced penetration that takes place outside of marriage, between a man and a woman who is not his wife.⁴⁷ Article 285 states, "Those who . . . force a woman to have intercourse outside of marriage are under threat of imprisonment . . . because they have committed rape."⁴⁸ By defining rape as occurring between a man and a woman who is not his wife, the Indonesian legislature has not only failed to address marital rape, but it has made it, under the current law, a legal impossibility.⁴⁹ The Code criminalizes statutory rape and rape outside of marriage, but if rape occurs within a marriage, the state defers to cultural ideologies of male dominance, ignoring the possibility that women have an individual right to bodily integrity, no matter what the context.⁵⁰ This lack of an individual rights framework in Indonesia's criminal laws also explains the state's failure to criminalize domestic

⁴⁴ BERGEN, *supra* note 43, at 59; Hasday, *supra* note 13, at 1496–97. One research team explains, "The kind of violation they have experienced is much harder to guard against [than rape by a stranger]." Hasday, *supra* note 13, at 1497 (alteration in original). Bergen also disputes the societal myth that rape by someone known to a woman, her husband, is somehow less traumatic than rape by a stranger. BERGEN, *supra* note 43, at 59. An Indonesian victim of marital violence states, "When I am alone, I always feel that my husband's shadow follows me and may pounce on me at any time. I feel anxious and disturbed." Idrus & Bennett, *supra* note 5, at 52. An American woman recalling rape by her husband says, "With your husband, it becomes personal. You say, this man knows me. He knows my feelings. He knows me intimately, and then to do this to me—it's such a personal abuse." Hasday, *supra* note 13, at 1498.

⁴⁵ Hasday, *supra* note 13, at 1496–97; Idrus & Bennett, *supra* note 5, at 49–50, 52.

⁴⁶ Idrus & Bennett, *supra* note 5, at 45 (discussing article 287 of the Indonesian Criminal Code).

⁴⁷ *Id.*

⁴⁸ FAILED JUSTICE, *supra* note 37, at 5 (quoting article 285 of the Indonesian Criminal Code).

⁴⁹ Idrus & Bennett, *supra* note 5, at 45.

⁵⁰ *See id.* Religious and cultural ideals encourage Indonesian wives to endure hardship and self-sacrifice, and not to challenge their husbands' authority. *Id.* Also, the state itself has interpreted women's identity and role in society, creating state-sponsored gender roles, with women exclusively seen as wives and mothers. KAMALA CHANDRAKIRANA, WAR'S EFFECT ON WOMEN: WOMEN IN INDONESIA'S VIOLENT TRANSITION 2 (2002), available at <http://komnas-perempuan.or.id/publikasi.asp> (last visited Nov. 20, 2003).

violence in Indonesia.⁵¹ Without an understanding that women have rights as individuals to bodily integrity, a state has little justification for challenging the rights of husbands to do what they want with their wives.⁵² Cultural norms alone regulate women's sexuality within marriage, so when a husband behaves violently toward his wife, she can claim no articulated individual right to be free from violence, and must obey her gender-determined duty to submit to her husband.⁵³

III. COMPARISON TO U.S. APPROACHES TO CRIMINALIZING MARITAL RAPE

In the United States, as in Indonesia, marital rape has not historically been a crime.⁵⁴ Although most states have modified their laws over the past twenty-five years to allow husbands to be prosecuted for raping their wives, twenty-six states retain some form of marital rape exemption.⁵⁵ Some states require a couple to be living separately at the time of the rape, some recognize marital rape only if it involves physical force or serious physical harm, and others provide reduced

⁵¹ See Idrus & Bennett, *supra* note 5, at 45–46 (discussing lack of legislation on domestic violence); see also Coomaraswamy, *supra* note 17, ¶¶ 990, 991. The House of Representatives was scheduled to discuss legislation on violence against women in 2003, including a draft bill on domestic violence and a revision of the Marriage Law based on principles of gender justice, but changes have not yet been made. Coomaraswamy, *supra* note 17, ¶ 990; *Domestic Violence Bill Receives Nod*, JAKARTA POST, May 14, 2003, available at <http://www.thejakartapost.com> (last visited Jan. 26, 2004); Eva C. Komandjaja, *Passing of Domestic Violence Bill Urged*, JAKARTA POST, Jan. 20, 2004, available at <http://www.thejakartapost.com> (last visited Jan. 26, 2004); Sari P. Setiogi, *Rights Activist Calls for Revision of Marriage Law*, JAKARTA POST, Aug. 28, 2003, available at <http://www.thejakartapost.com> (last visited Jan. 26, 2004).

⁵² See Idrus & Bennett, *supra* note 5, at 46.

⁵³ See *id.* at 45, 47.

⁵⁴ See Hasday, *supra* note 13, at 1375; see also Diana E. H. Russell, *Wife Rape and the Law*, reprinted in CONFRONTING RAPE AND SEXUAL ASSAULT 71, 71 (Mary E. Odem & Jody Clay-Warner eds., 1998) (tracing the origin of the marital rape exemption in the United States).

⁵⁵ Michelle J. Anderson, *Marital Immunity, Intimate Relationships, and Improper Inferences: A New Law on Sexual Offenses by Intimates*, 54 HASTINGS L.J. 1465, 1468–70 (2003); Hasday, *supra* note 13, at 1375; Russell, *supra* note 54, at 76; see, e.g., ARIZ. REV. STAT. ANN. §§ 13–1406.01, 13–1407(D) (West 2001) (providing that sexual assault is a class two felony, but a first offense of sexual assault of a spouse is only a class six felony, and the judge has discretion to make it a misdemeanor with mandatory counseling); CAL. PENAL CODE §§ 261, 262 (West 1999 & Supp. 2003) (containing a requirement that victims of marital rape report the incident within one year, unless the victim's allegation is supported by independent evidence, but not containing this reporting requirement for other types of rape); MINN. STAT. ANN. § 609.349 (West 2003) (prohibiting the prosecution of a spouse for rape unless the couple was living apart and one partner had filed for dissolution of the marriage).

penalties for marital rape.⁵⁶ In Minnesota, for example, “a person does not commit criminal sexual conduct . . . if the actor and the complainant were adults cohabiting in an ongoing voluntary sexual relationship at the time of the alleged offense or if the complainant is the actor’s legal spouse, unless the couple is living apart and one of them has filed for legal separation or dissolution of the marriage.”⁵⁷ The Minnesota statute does not explicitly state that marital rape is impossible, but it essentially fails to recognize marital rape by requiring the act to occur after the marriage has already broken down so far that the married couple is living separately.⁵⁸ Not only does a wife have to live apart from her husband to gain the right to refuse to have sex with him, but she must also file for dissolution of the marriage.⁵⁹ Thus, many U.S. rape laws, like Indonesian law, still operate under the pretense that rape does not, and can not, occur within marriage.⁶⁰

In the United States, marital rape exemptions and those who defend them rely on cultural assumptions about men, women, and the marital relationship.⁶¹ These assumptions ignore the individual interests of women within marriage.⁶² Supporters of the marital rape exemption in the United States argue that it protects the privacy of a married couple and it promotes marital harmony and reconciliation.⁶³ States and supporters of the exemption make the cultural assumptions that marriage is always harmonious, that husbands and wives are of one mind within the relationship, and that reconciliation is a possibility even after one spouse rapes the other.⁶⁴ The assumption that no injury can come from the marriage, since husband and

⁵⁶ Hasday, *supra* note 13, at 1484–85.

⁵⁷ MINN. STAT. ANN. § 609.349.

⁵⁸ *See id.*

⁵⁹ *Id.* The condition will also be satisfied if the husband files for dissolution. *See id.* Minnesota rape law pretends that marital rape occurs only when a marital relationship is on the verge of coming to a legal end. *See id.*

⁶⁰ *See id.*; see also statutes cited *supra* note 55.

⁶¹ *See* Hasday, *supra* note 13, at 1485–86. According to scholar Maria Bevacqua, the challenge to the existing sexual order and men’s sexual entitlement has been the most important challenge posed by the campaign against rape. MARIA BEVACQUA, *RAPE ON THE PUBLIC AGENDA: FEMINISM AND THE POLITICS OF SEXUAL ASSAULT 199* (2000).

⁶² *See* Hasday, *supra* note 13, at 1485–86. One proponent of the marital rape exemption suggests that a married person has a lesser expectation of personal autonomy than a single person, and a married person’s interest in bodily integrity must be weighed against the public policy favoring marital exemption. Anderson, *supra* note 55, at 1499. According to this argument, a change in one’s marital status automatically leads to a change in one’s rights as an individual. *See id.*

⁶³ Hasday, *supra* note 13, at 1485, 1487.

⁶⁴ *See id.* at 1485–87.

wife are always in agreement, leads to the view that legal intervention in the form of the complete criminalization of marital rape would be an unwanted introduction of antagonism into the marriage.⁶⁵ In part, marital rape exemptions are still in force in many states because abolishing them would require a societal recognition that marriage can be a source of danger and violence for women, and that women have rights as individuals against their husbands.⁶⁶

Indonesia makes a similar cultural assumption that marriages are harmonious because husbands and wives agree at all times.⁶⁷ This assumption also leads to the denial of women's individual rights within marriage.⁶⁸ Idrus and Bennett point out that the state emphasizes women's obligations, rather than their rights, and that one of their primary obligations in marriage is to obey their husbands and not challenge male authority.⁶⁹ The state institutionalizes gender inequality in articles 31 and 34 of Indonesia's 1974 Marriage Law, by designating women as 'managers' of the household and men as the 'heads' of families.⁷⁰ The ideal woman, as constructed by the state, fulfills the roles of wife and mother, and her purpose in life is to serve her husband, family, and country.⁷¹ Victims of marital violence in Indonesia often de-

⁶⁵ *Id.* Feminists point out that the idea of non-intervention by the state into private family matters is a myth. Gila Stopler, *Countenancing the Oppression of Women: How Liberals Tolerate Religious and Cultural Practices that Discriminate Against Women*, 12 COLUM. J. GENDER & L. 154, 216 (2003). Existing laws governing the family in areas such as marital rape are themselves legal and ideological interventions by the state. *Id.* at 216. For example, telling women that marital rape is not important enough to be criminalized sends an ideological message to husbands and wives about the ways in which they may interact. *See id.* Since nonintervention is a myth, and current laws perpetuate male dominance in the family, states now have a duty to intervene and change existing laws to counteract the damage they have already done to women. *Id.*

⁶⁶ Hasday, *supra* note 13, at 1499-1500; *see* Anderson, *supra* note 55, at 1497 (discussing the assumption that sexual offenses by spouses are not harmful enough to be criminalized).

⁶⁷ *See* Idrus & Bennett, *supra* note 5, at 45.

⁶⁸ *See id.* at 45; 48-51. The assumption of men's authority and sexual entitlement, coupled with the social shame for any wife who challenges her husband's authority or sexual entitlement, leads to a fictional picture of harmonious marriage. *See id.* If husbands and wives appear to the outside world to be in agreement, it is not necessarily because wives agree with their husbands, but because society says that wives do not have the right to disagree. *See id.* at 45, 48. If the state imagines that wives always follow what their husbands say, it will not be able to visualize an instance in which a woman would need to assert her rights as an individual. *See id.*

⁶⁹ *See id.* at 43, 45.

⁷⁰ *Id.* at 44; *see* 2 MODERN LEGAL SYSTEMS CYCLOPEDIA *The Legal System of Indonesia* § 1.3(E)(6) (Kenneth Robert Redden ed., 1989).

⁷¹ Idrus & Bennett, *supra* note 5, at 43. The term "State Ibuism" was created to describe this state construction of women as self-sacrificing. *Id.*

scribe the idea that men are entitled to sex within marriage.⁷² Due to the construction of sex as a woman's duty within marriage, there is always a presumption of her consent.⁷³ Under the current construction of a woman's role, a wife has no sexual rights as an individual within marriage, let alone rights under the law against her husband.⁷⁴

Indonesian activists have pushed forward a draft bill on the revision of the Marriage Law based on principles of gender justice, which the House of Representatives was scheduled to discuss in 2003.⁷⁵ By August 2003, no action had been taken and in a newspaper interview, one Indonesian activist and legislator continued to call for change,

⁷² *Id.* at 50–51. One woman explained her husband's claim to sexual entitlement, "He believes that as a husband, he has the right to be sexually served by his wife whenever he pleases. If I refused him, he would . . . force me to have sex." *Id.* at 51. In Idrus's and Bennett's study, the popular Bugis saying "*baine maccuei ripa'jello'na lakkainna*"—a wife should follow her husband's will—was often used to explain men's sexual violence within marriage. *Id.* U.S. supporters of the marital rape exemption may no longer explicitly claim husbands' entitlement to have sex with their wives, but this argument was common in the nineteenth century. See Hasday, *supra* note 13, at 1397. The majority of marital rape victims in Bergen's modern U.S. study, however, said that their husbands thought that forced sex was not rape, due to their sexual entitlement within marriage. BERGEN, *supra* note 43, at 20.

⁷³ See Idrus & Bennett, *supra* note 5, at 48. Similarly, in Cambodia, social codes dictate a woman's "sexual openness" to her husband. Surtees, *supra* note 24, at 97. For example, the *chbab srey*, the traditional Cambodian women's code of behavior, requires a woman to be sexually receptive to her husband. See *id.* at 111 n.11. One American critic of the marital rape exemption would go beyond mere elimination of the marital rape exemption to deny explicitly the defense of inferred ongoing consent. See Anderson, *supra* note 55, at 1543. She suggests adding a provision to sexual offense statutes stating, "A prior or subsequent sexual relationship between the defendant and the complainant—in marriage, cohabitation, dating, or other circumstances—shall not be a defense to a sexual offense . . ." *Id.*

⁷⁴ See Idrus & Bennett, *supra* note 5, at 48. "[A]dherence to cultural values always differs between individuals, yet many people internalize these ideals . . . The extent to which this is . . . depends on the attitudes of individual men and their willingness to acknowledge women's rights to sexual autonomy . . . within marriage." *Id.* at 49. Ratna Kapur criticizes the focus on violence against women in feminist politics in the international human rights arena because this approach uses and reinforces cultural essentialism. Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics*, 15 HARV. HUM. RTS. J. 1, 6 (2002). She sees women in the Third World portrayed as victims of their culture, which reinforces stereotyped representations of that culture. *Id.* This Book Review does not seek to categorize all Indonesian women as victims of their culture. Many women in Indonesia are working to change ideas about violence against women. See INDON. NAT'L COMM'N ON VIOLENCE AGAINST WOMEN, INDONESIA COUNTRY REPORT 4 (2002), available at <http://www.komnasperempuan.or.id/publikasi.asp> (last visited Mar. 24, 2004). Nevertheless, in order to create a solution to the problem of violence against women, Indonesians will have to examine the ways in which culture affects individual women's lives. See Idrus & Bennett, *supra* note 5, at 59.

⁷⁵ Coomasawamy, *supra* note 17, ¶ 990; INDON. NAT'L COMM'N ON VIOLENCE AGAINST WOMEN, *supra* note 74, at 3 (report prepared by the Indonesian National Commission on Violence Against Women after the UN Special Rapporteur on violence against women visited Indonesia in 1998 and issued a mission report).

highlighting the gender inequalities in the Marriage Law.⁷⁶ The state, however, cannot revise the Marriage Law or criminalize marital rape without challenging the broader cultural pattern of male authority and female subordination that Idrus and Bennett identify in Indonesia.⁷⁷

For historical and cultural reasons, Indonesian activists cannot adopt all of the arguments used by American feminists for the complete criminalization of marital rape, but should selectively incorporate arguments that are more likely to work in the Indonesian context.⁷⁸ The overarching purpose of the two movements would be the same: to show that marriage can be antagonistic and dangerous for women, and that they therefore need legal rights for protection against the harm caused by acts such as marital rape.⁷⁹ For instance, modern American feminists argue that women have the right to control their sexuality and their sexual pleasure, but that marital rape denies them these freedoms.⁸⁰ In the Indonesian context, this would be an ineffective argument, given cultural constructions of female sexuality.⁸¹ Bugis society considers female sexuality to be innately shameful, with the potential to bring shame to the family; therefore, reform efforts based on women's rights to sexual pleasure would be poorly received.⁸² The choice not to use this approach does not mean that commonly shared ideas about the role of women in the family and in marriage in Indonesia should not be challenged, but merely that Indonesian reformers should find a more practical starting point. Selective argumentation simply means that, as Idrus and Bennett suggest, those who wish to develop appropriate interventions for marital violence must understand its cultural context.⁸³

⁷⁶ Setiogi, *supra* note 51.

⁷⁷ See Idrus & Bennett, *supra* note 5, at 44–45.

⁷⁸ See Hasday, *supra* note 13, at 1491–97; Idrus & Bennett, *supra* note 5, at 43–52. The first campaign against marital rape in the United States began in the nineteenth century. Hasday, *supra* note 13, at 1377. Modern arguments, which have had some degree of success, are part of what Hasday calls the current social context of “a nation now explicitly committed to women’s legal equality.” *Id.* at 1375, 1382. Indonesia is not yet a nation in which there is an assumption of women’s legal equality. See Idrus & Bennett, *supra* note 5, at 44.

⁷⁹ See Hasday, *supra* note 13, at 1491.

⁸⁰ *Id.* at 1493.

⁸¹ See Idrus & Bennett, *supra* note 5, at 47–49; *supra* notes 72–74 and accompanying text.

⁸² See Idrus & Bennett, *supra* note 5, at 47.

⁸³ See *id.* at 59. For further discussion see Surtees, *supra* note 24, at 95, on the necessity of a functional definition of rape, as it exists in Cambodia and is understood by Cambodians, for the development of appropriate intervention.

American feminists use one rhetorical approach in their efforts to abolish marital rape exemptions that could be appropriate and successful in a movement to criminalize marital rape in Indonesia.⁸⁴ This line of argument contends that marital rape violates women's bodily integrity.⁸⁵ According to this argument, states that have marital rape exemptions, and the Indonesian government, which does not criminalize marital rape, disregard women's bodily integrity and autonomy, and sanction their vulnerability in marriage.⁸⁶ This argument, based on women's individual right to bodily integrity, is consistent with Idrus's and Bennett's suggestion that if Indonesia constructed rape as a crime against the individual, rape within marriage and its punishment would be a legal possibility.⁸⁷

An Indonesian campaign using the individual rights perspective could focus on the reality of the harm done to women by marital rape.⁸⁸ Married Indonesian women have the right to be free from the physical pain of rape, the depression and fear associated with rape, and the harm caused by other forms of marital violence that frequently accompany marital rape.⁸⁹ Until there is an understanding that women have an individual right to bodily integrity that they bring with them into marriage, a state will not pass legislation to protect that right.⁹⁰ Indonesians need compelling proof of the harm done to women before they will see a reason to challenge cultural and religious ideas about men's sexual entitlement and women's duties within marriage.⁹¹

⁸⁴ See Hasday, *supra* note 13, at 1494.

⁸⁵ *Id.* Professor Ann Cahill's project of rethinking rape describes rape as a threat to the bodily integrity of women. ANN J. CAHILL, *RETHINKING RAPE* 10 (2001). For Cahill, the threat to bodily integrity is a threat to a woman's status as a person. *Id.* Even women who have not been raped are impacted by the possibility, in their culture, that they might be raped. See *id.* at 143.

⁸⁶ See Hasday, *supra* note 13, at 1494; Idrus & Bennett, *supra* note 5, at 46

⁸⁷ See Idrus & Bennett, *supra* note 5, at 46.

⁸⁸ See Hasday, *supra* note 13, at 1496–98 (emphasizing women's own accounts of marital rape); Idrus & Bennett, *supra* note 5, at 49–52 (describing physical and mental experiences of women in their study).

⁸⁹ See Idrus & Bennett, *supra* note 5, at 49–52.

⁹⁰ See *id.* at 46.

⁹¹ See *id.* at 50–51; STATE MINISTRY FOR THE ROLE OF WOMEN OF THE REPUBLIC OF INDON., *supra* note 38, at 9. In the area of marital violence, state policy makers have chosen not to intervene in private family life. Idrus & Bennett, *supra* note 5, at 44. New arguments and new information are necessary in order to convince policy makers to change this approach of nonintervention. See *id.*

IV. EFFECTS OF THE INDIVIDUAL RIGHTS APPROACH IN INDONESIA

The individual rights paradigm would likely be the most effective approach to criminalizing marital rape in Indonesia due to its ability to begin the process of reform, even if it does not lead to the complete criminalization of marital rape.⁹² One of the most important, and likely effective, functions of the individual rights approach will be to break the silence about marital rape in Indonesia.⁹³ The individual right asserted should be the right to bodily integrity, as advanced by American feminists.⁹⁴ Idrus's and Bennett's study provides a starting point for the type of information that Indonesian women's organizations require in order to publicize marital rape.⁹⁵ As discussed in Part II, marital rape affects Indonesian women's mental and physical health, especially since it occurs in combination with other forms of physical violence.⁹⁶ Researchers must perform further research in order to reinforce Idrus's and Bennett's work, and to document the prevalence of marital rape throughout Indonesia, not just in the Bugis ethnic group.⁹⁷

One of the key strengths of the individual rights framework in the Indonesian context is the opportunity it affords to link theory with specific, factual instances of harm. Activists can argue not only that women have the individual right to bodily integrity, but also that they have the right to be free from the physical injuries, pain, and fear that are all a part of marital rape.⁹⁸ The stories of individual women are a

⁹² See Anderson, *supra* note 55, at 1468; Bennett & Manderson, *supra* note 1, at 10; Hasday, *supra* note 13, at 1494; Idrus & Bennett, *supra* note 5, at 53.

⁹³ See Bennett & Manderson, *supra* note 1, at 10 (noting the need to disturb community silences about violence against women). Idrus and Bennett describe marital violence as "one of the most mundane, pervasive and silenced forms of violence that operates in Indonesian societies." Idrus & Bennett, *supra* note 5, at 41. Furthermore, what the law, the media, and others say about rape influences victims' ideas about what constitutes rape and what they can do about it. Charlene L. Muehlenhard et al., *Is Rape Sex or Violence? Conceptual Issues and Implications*, in *SEX, POWER, CONFLICT: EVOLUTIONARY AND FEMINIST PERSPECTIVES* 119, 122 (David M. Buss & Neil M. Malamuth eds., 1996). If all of these sources in Indonesia are silent on marital rape, this will affect women's interpretation of their experiences. See *id.*

⁹⁴ See Hasday, *supra* note 13, at 1494.

⁹⁵ See Idrus & Bennett, *supra* note 5, at 49-53, 59.

⁹⁶ See *id.* at 49-52.

⁹⁷ See *id.* at 59. The authors note the need for further research, since the ways in which Bugis women experience violence are unique to their culture. *Id.* This suggests the importance of doing research among other Indonesian ethnic groups, where the patterns of violence may be different. See *id.*

⁹⁸ See Hasday, *supra* note 13, at 1494; Idrus & Bennett, *supra* note 5, at 49-53.

powerful reminder of the reality of marital rape and its effects, supporting the argument that each woman has a right to be free from rape.⁹⁹

Until Indonesians recognize the harm of marital rape for individual women, they will not see the need to address it, let alone go so far as to criminalize it.¹⁰⁰ Furthermore, publicity will not solve the problem of marital rape, but it could at least bring it into popular discussion.¹⁰¹ The lack of discussion of marital violence harms Indonesian women by preventing them from seeking or receiving help from community members.¹⁰² In the Bugis community, where a wife's duty is to submit to her husband's will, many women do not disclose their suffering due to shame.¹⁰³ The community may gossip about and stigmatize a woman who speaks out about her husband's violence, isolating rather than helping her.¹⁰⁴ In this context, an individual rights approach, whether it succeeds in criminalizing marital rape or not, will increase awareness of the harms of marital rape and increase the ability of victims to receive social support.¹⁰⁵ Women's organizations in Indonesia are already talking about and publicizing marital violence, but they do not necessarily

⁹⁹ See Idrus & Bennett, *supra* note 5, at 50–52 (using women's own accounts of marital rape to show the trauma of their experiences).

¹⁰⁰ See Russell, *supra* note 54, at 80. The author asserts that breaking the silence about marital rape is the first step in solving the problem. *Id.* Women and their communities need to know that it is a common occurrence but a very serious one. *Id.* Indonesian policy makers claim to follow a rule of nonintervention in family matters, so they will not criminalize marital rape until something changes their understanding of the problem. See Idrus & Bennett, *supra* note 5, at 44.

¹⁰¹ See PANEL ON RESEARCH ON VIOLENCE AGAINST WOMEN, UNDERSTANDING VIOLENCE AGAINST WOMEN, at v (Nancy A. Crowell & Ann W. Burgess eds., 1996). Mere publicity has not solved the problem of marital violence in the United States. See *id.* For example, talk shows and television dramas now commonly discuss marital violence, but there are still many misconceptions and many women still experience violence every year. *Id.*; Hasday, *supra* note 13, at 1496. However, Congress recognized the problem by passing the Violence Against Women Act of 1994. Violence Against Women Act of 1994, Pub. L. No. 103–322, 108 Stat. 1902 (1994) (codified as amended in scattered sections of 8, 18, 28 & 42 U.S.C.); PANEL ON RESEARCH ON VIOLENCE AGAINST WOMEN, *supra*, at v. In *United States v. Morrison*, however, the Supreme Court held that Congress did not have power under the Commerce Clause or the Fourteenth Amendment to enact VAWA's federal civil remedies for gender-motivated violence. 529 U.S. 598, 627 (2000).

¹⁰² See Idrus & Bennett, *supra* note 5, at 53.

¹⁰³ *Id.* at 48, 53.

¹⁰⁴ *Id.* at 53.

¹⁰⁵ See *id.* During the late 1970s in the United States, there was a trend toward naming categories of rape, such as acquaintance rape. BEVACQUA, *supra* note 61, at 155. Without a language or a concept with which to describe their experiences, women were less likely to view an incident as rape, even if they felt violated. *Id.* The naming of the category of marital rape in Indonesia could have a similar effect of legitimizing women's experiences in the view of the public. See *id.*

focus on marital rape.¹⁰⁶ If they adopt the perspective not just that husbands *should* not beat their wives, but that individual wives have a right not to be beaten, then marital rape may more easily enter the discussion.

Another important feature of the individual rights perspective is its ability to challenge cultural attitudes about marital rape and marital violence.¹⁰⁷ Taking an approach that does not question the cultural assumption that men are the authority figures in marriage, whose actions toward their wives should go unquestioned, is dangerous because it leaves in place a cultural template for further abuse.¹⁰⁸ If Indonesian reformers take the approach that raping one's wife is merely immoral or unethical, then control within the marriage will remain in the husband's hands—he will retain the ability to decide whether or not to have sex.¹⁰⁹ On the other hand, an individual rights argument gives control to women—it asserts that wives do not have a duty to have sex whenever their husbands want to, because they have the right to make decisions about their own bodies.¹¹⁰ Encouraging community members

¹⁰⁶ See INDON. NAT'L COMM'N ON VIOLENCE AGAINST WOMEN, *supra* note 74 (discussing the work of Indonesian women's groups but not mentioning the issue of marital rape); see also BERGEN, *supra* note 43, at 107–08 (discussing the lack of response of service providers to victims of marital rape and the need for marital rape in the United States to be recognized as a serious problem and included in the agendas of women's organizations); Russell, *supra* note 54, at 80 (noting the need for battered women's organizations to place marital rape on their agendas and to educate the community about it).

¹⁰⁷ See *supra* note 72 and accompanying text on the cultural conception of men's sexual entitlement. Some authors suggest that cultural norms that define masculine as dominant and feminine as submissive create gender role expectations that encourage forced sexual intercourse as a way to control women. IDA M. JOHNSON & ROBERT T. SIGLER, FORCED SEXUAL INTERCOURSE IN INTIMATE RELATIONSHIPS 114 (1997); see also Jacquelyn C. Campbell, *Sanctions and Sanctuary: Wife Battering Within Cultural Contexts, in TO HAVE AND TO HIT: CULTURAL PERSPECTIVES ON WIFE BEATING* 261, 266 (Dorothy Ayers Counts et al. eds., 2d ed. Univ. of Ill. Press 1999) (1992) (discussing feminist explanations of wife battering as encouraged by social organizations that reinforce male dominance). Thus it is necessary to challenge cultural norms in order to end the use of rape within marriage. See JOHNSON & SIGLER, *supra*, at 113.

¹⁰⁸ See Hasday, *supra* note 13, at 1451–52; Idrus & Bennett, *supra* note 5, at 46, 58.

¹⁰⁹ See Hasday, *supra* note 13, at 1451–52. Popular prescriptive literature in the United States in the nineteenth century described the harm that marital rape caused wives, but the solution that writers proposed left the husband in control. *Id.* The goal of this literature was to convince husbands that mutuality would benefit themselves and their wives, but it did not challenge husbands' authority to decide how to behave. *Id.* at 1452. Instead, husbands were told that the ultimate choice was theirs, but that it would be beneficial to exercise voluntary self-restraint. *Id.* Nineteenth century feminists, on the other hand, argued that wives had rights to their own persons and should have control over marital intercourse. *Id.* at 1442.

¹¹⁰ See *id.* at 1494 (describing marital rape as a violation of a woman's bodily integrity).

to talk about marital rape and to consider the idea that women have individual rights within marriage will be an important accomplishment and a first step toward the elimination of marital rape.¹¹¹

Indonesian opponents of criminalizing marital rape may argue that the culture has to change first before rape can be successfully criminalized.¹¹² The individual rights paradigm, however, should not just aim for the passage of new legislation. Those who employ the individual rights framework will encourage cultural change by convincing Indonesians that marital rape is an offensive and harmful act, and this understanding will prompt changes in attitudes about women and men.¹¹³ In addition, in countries where service providers do not yet offer significant support for rape survivors, it is important to move rapidly from understanding to intervention.¹¹⁴ Crisis centers do exist in Indonesia, but they are largely unhelpful to marital rape victims, given the general lack of recognition of marital rape as a problem and women's culturally enforced reluctance to seek aid.¹¹⁵ Instead of waiting for attitudes about marital rape to change in Indonesia through public education, reformers employing the individual rights perspective can simultaneously work toward public understanding, the provision of services, and legal change.¹¹⁶

¹¹¹ See *supra* note 105 and accompanying text.

¹¹² See Jean G. Zorn, "Women's Rights Are Human Rights": *International Law and the Culture of Domestic Violence*, in *TO HAVE AND TO HIT: CULTURAL PERSPECTIVES ON WIFE BEATING*, *supra* note 107, at 286, 295–97. Professor Zorn answers the question of whether international law can be used to change culture, saying that law and culture change each other all the time. *Id.* at 296. Laws operate to change behavior, but social change does not occur merely because new law is enacted. *Id.* at 296–97. In Indonesia, a successful campaign against marital rape will require enforcement of the law and support by the government and other sources. *See id.* at 297.

¹¹³ See Hasday, *supra* note 13, at 1504 (concluding that in the United States, cultural assumptions about marriage must be challenged by discussing the injury inflicted by marital rape, in order to change the legal system, which in many cases still protects men's sexual entitlement).

¹¹⁴ See Surtees, *supra* note 24, at 109. The author describes the understanding of rape in Cambodia, where NGOs focus on domestic violence and trafficking, but offer no specific interventions for rape survivors. *Id.* at 93. She attributes this in part to the difficulty in defining rape in Cambodian terms and the socially charged nature of rape in Cambodian society. *Id.* In Cambodia, as in Indonesia, social norms require wives to be sexually available to their husbands. *See id.* at 97.

¹¹⁵ See BERGEN, *supra* note 43, at 108 (noting that service providers' inadequate responses to marital rape reflect a lack of public concern about marital rape); Idrus & Bennett, *supra* note 5, at 53 (discussing women's silence about marital violence in order to avoid stigmatization in the community); see also *INDON. NAT'L COMM'N ON VIOLENCE AGAINST WOMEN*, *supra* note 74, at 4 (describing women's crisis centers in Indonesia).

¹¹⁶ See Coomaraswamy, *supra* note 17, ¶ 993; *INDON. NAT'L COMM'N ON VIOLENCE AGAINST WOMEN*, *supra* note 74, at 3–4.

The push by women's organizations for the recognition of domestic violence as a crime provides a positive example of change on multiple levels in the international fight for gender equality.¹¹⁷ These organizations have raised the visibility of violence against women, which in turn has led to the creation of government- and community-run crisis centers, women's desks in some police stations, and proposed domestic violence legislation before the House of Representatives.¹¹⁸ Many Indonesians doubtless still do not believe that marital violence is a problem, but the government has begun to take action anyway.¹¹⁹ Although the House accepted the domestic violence bill for deliberation in 2003, the head of the National Commission on Violence Against Women reports that, despite intense discussion, there are few signs that the House will endorse the draft bill in the near future.¹²⁰

Given the public awareness and changes in cultural ideas that the individual rights approach could bring about, it may lead to the criminalization of marital rape in Indonesia.¹²¹ If it does not lead to the complete elimination of the marital rape exemption, this approach could at least lead to changes in marital rape law, as it has done in the United States.¹²² In addition, the individual rights framework could contribute to the efforts to pass legislation on domestic violence by publicizing marital violence in general. If the domestic violence law currently under consideration passes, then the individual rights perspective will help to raise community awareness of women's rights, since legislation will do no good unless women are willing to take advantage of it.¹²³ Therefore, even with the passage of a domestic violence law or a marital rape law, public awareness and acknowledg-

¹¹⁷ See INDON. NAT'L COMM'N ON VIOLENCE AGAINST WOMEN, *supra* note 74, at 3–4.

¹¹⁸ See Coomaraswamy, *supra* note 17, ¶ 994; INDON. NAT'L COMM'N ON VIOLENCE AGAINST WOMEN, *supra* note 74, at 3, 4.

¹¹⁹ See Coomaraswamy, *supra* note 17, ¶ 994; INDON. NAT'L COMM'N ON VIOLENCE AGAINST WOMEN, *supra* note 74, at 3, 4.

¹²⁰ *Domestic Violence Bill Receives Nod*, *supra* note 51; Komandjaja, *supra* note 51.

¹²¹ See INDON. NAT'L COMM'N ON VIOLENCE AGAINST WOMEN, *supra* note 74, at 2–4. Increased visibility around domestic violence has led to some government support and may lead to legislation, so the same could happen for marital rape. *See id.* at 3–4.

¹²² See Hasday, *supra* note 13, at 1375; Russell, *supra* note 54, at 76. Professor Russell explains that most states now allow the prosecution of husbands for marital rape. Russell, *supra* note 54, at 76. Many of these states, however, still maintain some form of marital exemption so that marital rape is only a crime under certain circumstances. *Id.*

¹²³ See Idrus & Bennett, *supra* note 5, at 58; *supra* note 105 and accompanying text on the possibility of increasing awareness of the problem.

ment of women's individual rights will be necessary in order for women to overcome social stigma and pursue legal remedies.¹²⁴

V. MOVEMENT TOWARD CRIMINALIZATION OF MARITAL RAPE IN INDONESIA

International human rights organizations as well as groups within Indonesia have begun to focus on violence against women, including marital violence, in Indonesia.¹²⁵ The State Ministry for the Role of Women reported in 1999 that as part of its national plan of action to prevent and eliminate violent acts against women, Indonesia was implementing a zero tolerance policy, which meant that it would not tolerate any violent act, no matter how small.¹²⁶ Nowhere in its report, however, does the State Ministry address the problem of marital rape.¹²⁷ The State Ministry does report that there is discussion underway to modify Indonesian criminal law to provide harsher penalties for violence against women and rape, but nowhere mentions a need to change the definition of rape to include spouses.¹²⁸ In addition, the State Ministry includes in its list of obstacles to reform, the "community soci[o]cultural environment that insufficiently support[s] [women's] progress."¹²⁹ Nevertheless, the state and legislators themselves have not been able to make the necessary step to understand marital rape as a violation of women's individual rights.¹³⁰ The enactment of specific legislation on domestic violence could open the door for legislation criminalizing marital rape because it would signal a shift in the state's approach of non-intervention in family life.¹³¹

Another positive step toward criminalizing marital rape in Indonesia is the recent establishment of the Indonesian National Commission on Violence Against Women.¹³² A presidential decree established

¹²⁴ See Idrus & Bennett, *supra* note 5, at 58. The shame associated with marital violence is critical in preventing Bugis women from seeking social support and medical assistance. *Id.*

¹²⁵ Coomaswamy, *supra* note 17, ¶¶ 989–99; INDON. NAT'L COMM'N ON VIOLENCE AGAINST WOMEN, *supra* note 74, at 1–7; STATE MINISTRY FOR THE ROLE OF WOMEN OF THE REPUBLIC OF INDON., *supra* note 38, at 8–13.

¹²⁶ STATE MINISTRY FOR THE ROLE OF WOMEN OF THE REPUBLIC OF INDON., *supra* note 38, at 12–13.

¹²⁷ See generally *id.*

¹²⁸ *Id.* at 8–11.

¹²⁹ *Id.* at 8.

¹³⁰ See Idrus & Bennett, *supra* note 5, at 46.

¹³¹ See Coomaswamy, *supra* note 17, ¶ 990; Idrus & Bennett, *supra* note 5, at 44; INDON. NAT'L COMM'N ON VIOLENCE AGAINST WOMEN, *supra* note 74, at 3.

¹³² Coomaswamy, *supra* note 17, ¶ 993.

the Commission in 1998, one month before the UN Special Rapporteur visited Indonesia, as a response to protests by women activists and organizations.¹³³ Although the Commission recognizes positive progress, including legislation under consideration on domestic violence, it notes that the laws currently in operation on rape and sexual abuse are out-dated and inappropriate.¹³⁴ Yet even the Commission, in its report for the annual consultation with the Special Rapporteur, does not specifically mention the need to criminalize marital rape.¹³⁵ It states that the most difficult problem to address is the justification of gender-based violence in the name of religion or tradition.¹³⁶ The Commission, like the State Ministry for the Role of Women, sees cultural and religious beliefs such as the right of a husband physically to punish his wife as impediments to progress.¹³⁷ The Commission and other organizations need not only to challenge cultural beliefs about the rights of husbands, but also to assert the positive individual rights of wives in order to make clear the full impact of marital rape.¹³⁸

¹³³ *Id.*; INDON. NAT'L COMM'N ON VIOLENCE AGAINST WOMEN, *supra* note 74, at 2. The Commission reports that it was formed after the violation of women's human rights during the May 1998 riots against ethnic Chinese communities in Jakarta, during which thousands were raped and murdered. Coomaraswamy, *supra* note 17, ¶ 990; INDON. NAT'L COMM'N ON VIOLENCE AGAINST WOMEN, *supra* note 74, at 3. Its official creation came through a presidential decree, but the Commission itself was created and articulated by the Indonesian women's movement. Coomaraswamy, *supra* note 17, ¶ 990; INDON. NAT'L COMM'N ON VIOLENCE AGAINST WOMEN, *supra* note 74, at 3. Although created by the government, the Commission protested the government's rejection of the report presented to the UN by the Special Rapporteur after her visit to Indonesia. INDON. NAT'L COMM'N ON VIOLENCE AGAINST WOMEN, *supra* note 74, at 3.

¹³⁴ INDON. NAT'L COMM'N ON VIOLENCE AGAINST WOMEN, *supra* note 74, at 6.

¹³⁵ See generally INDON. NAT'L COMM'N ON VIOLENCE AGAINST WOMEN, *supra* note 74.

¹³⁶ *Id.* at 5.

¹³⁷ See *id.*; see generally Idrus & Bennett, *supra* note 5, at 45–46 (discussing marital rape in Islam). The *Qur'an* refers to the issue of women refusing to have sex with their husbands. Idrus & Bennett, *supra* note 5, at 45. One *hadith* states, "a woman who refuses her husband may be cursed by an angel until morning." *Id.* Orthodox commentators claim that it is a sin for a woman to refuse her husband, while more liberal commentators argue that a woman has the right to negotiate with her husband. *Id.* Kathleen Portuán Miller interprets the *Qur'an* to forbid domestic violence rather than support it, and argues that "Muslim sexism" does not exist. Kathleen A. Portuán Miller, *The Other Side of the Coin: A Look at Islamic Law as Compared to Anglo-American Law—Do Muslim Women Really Have Fewer Rights Than American Women?*, 16 N.Y. INT'L L. REV. 65, 89, 144 (2003). She blames inequality and violence on "cultural sexism," which can include what she considers a culture's misinterpretation of Islam. See *id.* at 69, 144–45.

¹³⁸ See Idrus & Bennett, *supra* note 5, at 46.

CONCLUSION

In their essay, "Presumed Consent: Marital Violence in Bugis Society," Nurul Ilmi Idrus and Linda Rae Bennett discuss cultural, political, and religious ideas that explain the prevalence of marital rape and the lack of regulation governing it in Indonesia.¹³⁹ The authors assert that if legislators saw rape as a crime against an individual and her humanity, then marital rape and its punishment would be a legal possibility.¹⁴⁰ This Book Review argues that reformers must use an individual rights rhetorical approach in working toward criminalizing marital rape in Indonesia, because marital rape will not be a community or legislative concern until the community and legislators understand women to have individual rights within marriage.

Activists have operated within an individual rights framework in seeking to challenge cultural assumptions about the marital relationship in the United States.¹⁴¹ The individual rights paradigm could have a similar role in Indonesia, where cultural assumptions prevent communities and even women's organizations from talking about the problem of marital rape.¹⁴² Indonesia is moving in the direction of positive legal change for women in general, but further steps are necessary to ensure both legal and social change, which would culminate in criminalizing marital rape and changing underlying cultural assumptions about women in marriage.¹⁴³ Criminalization will not end the problem of marital rape in Indonesia, but it is an important step toward changing women's experiences of violence in marriage and in the community.¹⁴⁴

¹³⁹ *See id.* at 45, 58–59.

¹⁴⁰ *Id.* at 46.

¹⁴¹ *See* Hasday, *supra* note 13, at 1494.

¹⁴² *See* Idrus & Bennett, *supra* note 5, at 53.

¹⁴³ *See* discussion *supra* Part IV.

¹⁴⁴ *See* Zorn, *supra* note 112, at 296. Although the United States has laws prohibiting violence against women, millions of women each year experience battering by an intimate partner. *See* PANEL ON RESEARCH ON VIOLENCE AGAINST WOMEN, *supra* note 101, at 1.

