

**MARITAL RAPE AS A VIOLATION OF WOMEN’S FUNDAMENTAL  
HUMAN RIGHTS IN MUSLIM FAMILY INSTITUTION: A VIEW ON  
MALAYSIA LAW (PENAL CODE SECTION 375A) AND INDONESIA  
LAW (UU NUMBER 23/2004 THE ELIMINATION OF DOMESTIC  
VIOLENCE ACT)**

**THESIS**

**By :**

Nurulhuda Sofia binti Morsalin

15210150



DEPARTMENT OF ISLAMIC FAMILY LAW SHARIA’ FACULTY  
STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM MALANG

2021

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2021

## **STATEMENT OF AUTHENTICITY**

In the name of Allah,

With consciousness and responsibility toward the development of knowledge, the writer declare that the thesis entitled :

**MARITAL RAPE AS A VIOLATION OF WOMEN'S FUNDAMENTAL  
HUMAN RIGHTS IN MUSLIM FAMILY INSTITUTION : A View on  
Malaysia Penal Code Section 375A And Indonesia Law UU Number 23/2004  
The Elimination of Domestic Act**

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Malang, 1 October 2021

Writer,



Nurulhuda Sofia binti Morsalin

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SECTION 375A) AND INDONESIA LAW (UU NUMBER 23/2004 THE  
ELIMINATION OF DOMESTIC ACT)**

the supervisor stated that this thesis has met the scientific requirements to be proposed and to be examined on the Assembly Board of Examiners.

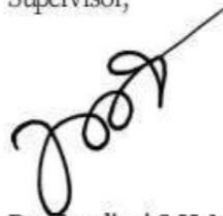
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The Elimination of Domestic Act**

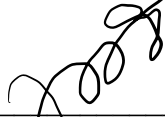
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## MOTTO

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا  
وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

And of His signs is that He created for you from yourselves mates  
that you may find tranquility in them; and He placed between you  
affection and mercy. Indeed in that are signs for a people who  
give reflection

[Ar Rum : 21]

## ACKNOWLEDGEMENT



Alhamdulillahirabbil'alamin, given His rahmat, so we can finish this thesis entitled

“ MARITAL RAPE AS A VIOLATION OF WOMEN’S FUNDAMENTAL HUMAN RIGHTS IN MUSLIM FAMILY INSTITUTION: A VIEW ON MALAYSIA LAW (PENAL CODE SECTION 375A) AND INDONESIA LAW (UU NUMBER 23/2004 THE ELIMINATION OF DOMESTIC ACT) ”.

Peace be Upon The Rasulullah Prophet Muhammad SAW who has taught us guidance (*uswatun hasanah*) our life. By following Him, may we belong to those who believe and get their intercession on the last day of the end. Amien.

From all the teaching, advice, guidance, and helps of service for us to finish this thesis, then with all humility the writer will expresses the gratitude which is unequaled to:

1. Prof Dr HM Zainuddin, as the Rector of The State Islamic University

Maulana Malik Ibrahim of Malang.

2. Dr. Sudirman, M.A, as the Dean of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.



3. Erik Sabti Rahmawati as the Head of The Department of Islamic Family Law

Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang

4. Dra. Jundiani, SH., M.Hum as my thesis supervisor. The writer thanks for spending time guiding, directing, and motivating to finish writing this thesis. The writer hopes that Allah will bless her and his family.

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6. All of the educators at Maulana Malik Ibrahim Malang's State Islamic University's Syariah Faculty who have taught us. May all of their charity be part of worship for Allah SWT if they have good intentions.

7. Staff of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.

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9. My lovely mothers, Dayang Zakiah binti Abang Johny and Fazidah Isung and fathers, Morsalin bin Ramli and Abu Bakar Mohd Ghazali. Thank you for working so hard to make me a graduate. I owe you guys my graduation success. I

couldn't have done it without you and I love you so much. May Allah grants you Jannah.

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Malang, 10th September 2021

Writer,

A handwritten signature in black ink, appearing to be 'Nurulhuda Sofia binti Morsalin', written in a cursive style.

Nurulhuda Sofia binti Morsalin

NIM 15210150

## **TRANSLITERATURE GUIDELINES**

### **A. General**

Transliteration is the transfer of Arabic writing to Indonesian (Latin) writing, not the translation of Arabic into Indonesian. Included in this category are Arabic names from Arab countries, while Arabic names from non-Arab countries are written as the spelling of the national language, or as written in reference books. Write the title of the book in a footnote or bibliography, still using these transliteration terms.

There are many options and transliteration provisions that can be used in writing scientific papers, both of international, national standards and provisions specifically used by certain publishers. The transliteration used by the Sharia Faculty of the State Islamic University (UIN) Maulana Malik Ibrahim Malang uses EYD plus, which is a transliteration based on the Joint Decree (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia, dated January 22, 1998, No. 158/1987 and 0543. b/U/1987, as stated in A Guide Arabic Transliteration, INIS Fellow 1992.

**B. Consonant**

*Table 1*

Arabic Consonant	Latin Consonant	Arabic Consonant	Latin Consonant
ا	Not symbolized	ض	dl
ب	B	ط	th
ت	t	ق	q
ث	ts	ل	l
ج	J	م	m
ح	H	ن	n
خ	kh	ع	‘ horizontal comma
د	d	غ	gh
ذ	dz	ف	f
ر	r	ك	k
ز	z	و	w
س	S	ه	h
ش	sy	ي	y
ص	sh		

Hamzah (ء) which is often denoted by alif, when located at the beginning of the word then in its transliteration follows the vowel, is not symbolized, but when located in the middle or end of the word, then denoted by a comma above ('), reversed with a comma (') for the replacement of the symbol “ع”.

**C. Long Vowels and Diphthongs**

Each Arabic writing in the form of the Latin vowel fathah is written with "a", kasrah with "i", dlommah with "u," while the long reading of each is written in the following way:  
 The vowel (a) is long = â for example قال becomes qâla  
 The long vowel (i) = î for example قيل becomes qîla  
 The long vowel (u) = û for example دون becomes dûna

Especially for the reading of ya 'nisbat, then it cannot be replaced with "î", but still written with "iy" in order to describe ya' nisbat at the end. The same goes for the diphthong, wawu and ya 'sounds after fathah is written with "aw" and "ay".

Consider the following example:

Diphthong (aw) = و for example قول becomes qawlun

Diphthong (ay) = ي for example خير becomes khayrun

#### **D. Ta 'marbûthah (ة)**

Ta 'marbûthah is transliterated with "t" if it is in the middle of the sentence, but if the ta' marbûthah is at the end of the sentence, then it is transliterated by using "h" for example الرسالة للمدرسة becomes al risalat li al-mudarrisah, or if it is in the middle a sentence that consists of the arrangement of mudlaf and mudlaf ilayh, then transliterated by using t which is connected with the next sentence, for example الله رحمة في becomes fi rahmatillâh.

#### **F. Articles and Lafdh al-Jalâlah**

Articles in the form of "al" (ال) is written in lower case, unless it is located at the beginning of the sentence, while "al" in lafadh jalâlah which is in the middle of the sentence that is supported (idhafah) is then removed. Consider the following examples:

1. Al-Imâm al-Bukhâriy said...
2. Al-Bukhâriy in the preface of his book explains...
3. Masyâ 'Allâh kâna wa mâ lam yasya' lam yakun.
4. Billâh 'azza wa jalla.

#### **G. Indonesian Arabic Names and Words**

Every quote from Arabic must, in theory, be written using a transliteration scheme. It is not necessary to use the transliteration procedure if the quote is an Arabic name of an Indonesian or an Arabic translation into Indonesian. Consider the following scenario:

By increasing prayers in various royal officials, Abdurrahman Wahid, the fourth former President of the Republic of Indonesia, and Amin Rais, the former Speaker of the MPR at the same time, have committed to eradicate nepotism, collusion, and corruption from Indonesia, however,

Note the writing of the name "Abdurrahman Wahid," "Amin Rais" and the word "salat" written using Indonesian writing procedures that are adapted to the writing of his name. Although the words come from Arabic, but it is a name from the Indonesian and Indonesian, so it is not written in the way of "Abd al-Rahmân Wahîd," "Amîn Raîs," and not written with "shalâ



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## ABSTRACT

Morsalin, Nurulhuda Sofia Binti, 15210150. 2021. **Marital Rape As A Violation Of Women's Fundamental Human Rights In Muslim Family Institution: A View On Malaysian Penal Code Section S375A and Indonesia Law UU Number 23/2004 The Elimination Of Domestic Act.** Thesis. The Department of Islamic Family Law, Faculty of Syariah, State Islamic University Maulana Malik Ibrahim, Malang.  
Supervisor : Dra. Jundiani, S.H, M.Hum.

*Keywords : Marital Rape, Violation, Muslim Family Institution*

Marital rape is a crime that can take place in any matrimonial home. However, the number of marital rape lawsuits filed in court is relatively low as the wives are unaware that marital rape is considered a violation in Malaysia and Indonesia. Due to social pressure, marital rape seems a taboo topic to be discussed. Patriarchy teaching has been fostered in Malaysian and Indonesian households due to cultural and customary practices and a misunderstanding of religious teaching. In this research, the author will discuss how can marital rape be considered a violation of women's fundamental human rights to Muslim family institutions in Malaysia and Indonesia and how the legislation system in Malaysia and Indonesia can protect women from marital rape.

The research method in this study will be normative research with a qualitative approach. The author intends to perform literature study by reviewing legal documents such as the Malaysian Criminal Code S.375A and Law of the Republic of Indonesia Number 23 of 2004, as well as periodicals and academic works.

According to the findings of this study, Section 375 of the Malaysian Criminal Code clarifies that penetration is sufficient to establish that sexual intercourse is required to commit rape. If a marriage is lawful or acknowledged as legal in Malaysia, sexual encounters between a man and his wife are not robbed. Additionally, in S.375, any man in legal marriage who causes fear or injury to his wife or anyone else to have sex with her will be imprisoned for five years. Regrettably, S.375A does not mention consent, which means that consent plays no role in delegitimizing intercourse. While, in Indonesia, marital rape is not criminalized under Indonesia Criminal Code, and it is only stated in Domestic Violence Protection Act. However, the cases is not taken seriously when the punishment is less strict instead of rape that occurs outside marriage. There is no specific law enforcement in

Malaysia and Indonesia to prosecute the perpetrator of marital rape, and as a result of the lack of a specific legal allocation, victims may not receive the protection they deserve. Prosecuting the husband for marital rape while remaining the legal marriage is nearly impossible.

## ملخص

مرسلين، نورالهدى صوفيا 15210150، 2021م، الاغتصاب الزوجي هو انتهاك حقوق الإنسان الأساسية للمرأة في مؤسسة الأسرة المسلمة: وجهات نظر على قسم القوانين الجنائية بماليزيا S375A وقانون إندونيسي رقم 23/2004 لإلغاء قانون العنف المنزلي، البحث التكميلي. قسم القانون الأسري الإسلامي، كلية الشريعة، الجامعة الإسلامية الحكومية مولانا مالك إبراهيم مالانج.

المشرف: M. Hum ،S.H. ،Dra. Jundiani

### الكلمة الافتتاحية: الاغتصاب الزوجي، انتهاك، مؤسسة الأسرة المسلمة،

يعتبر الاغتصاب الزوجي هو نوع من جرائم مما يحدث في أي منزل الزوجية. ومع ذلك، فإن العديد من دعاوى الاغتصاب الزوجي التي خلعت في المحكمة كانت منخفضة لأن الزوجات لا يدركن أن الاغتصاب الزوجي وهو نوع من انتهاك حقوقهن في ماليزيا وإندونيسيا. بسبب الضغط الاجتماعي، يبدو الاغتصاب الزوجي موضوعاً محظوراً يجب مناقشته. قد عزز تعليم النظام الأبوي في الأسر المعيشية الماليزية والإندونيسية بسبب الممارسات الثقافية والعرفية، وسوء فهم التعليم الديني. في هذا البحث، ستناقش الباحثة عن هذا الاغتصاب الزوجي يعتبر بانتهاك حقوق الإنسان الأساسية للمرأة في مؤسسة الأسرة المسلمة في ماليزيا وإندونيسيا وكذلك، يمكن للنظام التشريعي في ماليزيا وإندونيسيا أن يحمي النساء من الاغتصاب الزوجي.

والمناهج الذي تستخدم الباحثة هو الدراسة المعيارية من خلال البحث الكيفي. تهدف الباحثة إلى القيام بدراسة مكتبية من خلال دراسة مادة القانون ومنها قسم القوانين الجنائية بماليزيا S375A وقانون إندونيسي رقم 23 لعام 2004م والدراسات المتعلقة بها والمجلات الأكاديمية كمراجع. يتضمن هذا البحث فيه أن المادة 375 من القوانين الجنائية بماليزيا التي توضح أن الإيلاج يكفي لإثبات الجماع المطلوب لارتكاب الاغتصاب. قد أبرز الاستثناء في الجماع الجنسي بين زوج وزوجته لا يدل على اغتصاب إذا كان الزواج سارياً بموجب أي قانون مكتوب سارٍ في ذلك الوقت أو كان معترفاً به على أنه شرعي في ماليزيا. بالإضافة إلى ذلك، في الفصل 375، أي رجل في زواج قانوني أو شرعي يتسبب في الخوف أو الأذى لزوجته أو أي شخص آخر لممارسة الجماع الجنسي معها، يعاقب بالسجن لمدة خمس سنوات. وللأسف، لا يذكر الموافقة على الفصل 375 (أ) مما يعني أن الموافقة لا تلعب دوراً هاماً في نزع الشرعية عن الجماع. بينما كان في إندونيسيا، لا يتم تجريم الاغتصاب الزوجي بموجب القانون الجنائي الإندونيسي، ولكنه تكتب في قانون العنف المنزلي فقط. ومع ذلك، لا تؤخذ على محمل الجد عندما تكون العقوبة

أقل صرامة بدلا من الاغتصاب الذي يحدث خارج الزواج. لا يوجد تطبيق قانوني محدد في ماليزيا وإندونيسيا لمقاضاة مرتكب الاغتصاب الزوجي، ونتيجة من عدم وجود القانون المحدد على ذلك، قد لا يحصل الضحايا على الحماية التي يستحقونها. مقاضاة الزوج بتهمة الاغتصاب الزوجي مع بقاء الزواج القانوني كاد يكون مستحيلا

## ABSTRAK

Morsalin, Nurulhuda Sofia Binti, 15210150. 2021. ***Marital Rape Sebagai Pelanggaran Hak Asasi Wanita Dalam Institusi Keluarga Muslim : Studi Komparatif Penal Kode Malaysia S.375A and UU Nomer 23/2004 Penghapusan Keganasan Rumah Tangga.*** Skripsi. Jurusan Al Ahwal As Syaksiyyah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang.

Dosen Pembimbing : Dra. Jundiani, S.H, M.Hum.

*Kata Kunci : Marital Rape, Pelanggaran Hak, Institusi Keluarga Muslim*

*Marital rape* adalah salah satu bentuk pidana yang bisa terjadi di dalam perkawinan di mana bisa di bahas sebagai masalah di ruang lingkup hukum keluarga dan juga hukum pidana. Pengajuan kasus tentang *marital rape* di pengadilan dihitung rendah karena para istri tidak sadar bahawa *marital rape* di anggap sebagai pelanggaran dan pelecehan seksual di Malaysia dan Indonesia. Di karenakan stigma dari masyarakat, marital rape merupakan topik yang kontroversial untuk dibicarakan. Ajaran patriarki sudah terbiasa di dalam mayoritas keluarga di Malaysia dan Indonesia karena taatnya pada adat dan budaya yang membuatkan terjadi salah paham dalam memahami ajaran agama. Di dalam penelitian ini, penulis akan membahas bagaimana marital rape dianggap sebagai pelanggaran hak asasi wanita di dalam institusi keluarga muslim di Malaysia dan Indonesia. Selain itu, penelitian ini juga akan membahas bagaimana perundangan di Malaysia dan Indonesia melindungi istri –istri daripada marital rape. Jenis penelitian yang digunakan adalah penelitian normatif dengan pendekatan kualitatif. Penulis juga meneliti bahan hukum ; Penal Kode Malaysia 375A dan UU Nomer 23/3004 dengan jurnal hukum dan penulisan akademik yang berkaitan.

Penelitian ini menemukan bahwa Penal Kode Malaysia 375 menjelaskan penetrasi sudah cukup untuk pembuktian perkosaan. Pengecualian yang disorot adalah hubungan seksual antara seorang pria dan istrinya tidak diperkosa jika pernikahan itu sah menurut hukum tertulis dan perakui sah disisi hukum. Selain itu, dalam S.375A, setiap pria dalam perkawinan yang sah yang menyebabkan ketakutan kepada istrinya atau orang lain untuk berhubungan seks dengannya akan dipenjara selama lima tahun. Sayangnya, S.375A tidak menyebutkan persetujuan, yang berarti bahwa persetujuan tidak berperan dalam mendelegitimasi hubungan seksual. Sedangkan di Indonesia, perkosaan dalam perkawinan tidak dikriminalisasi

dalam KUHP Indonesia, dan hanya diatur dalam Undang-Undang Perlindungan KDRT. Namun, kasus tersebut tidak ditanggapi dengan serius ketika hukumannya lebih ringan daripada pemerkosaan yang terjadi di luar nikah. Tidak ada penegakan hukum khusus di Malaysia dan Indonesia untuk mengadili pelaku perkosaan dalam perkawinan, dan sebagai akibat dari kurangnya alokasi hukum yang spesifik, para korban mungkin tidak menerima perlindungan yang layak mereka terima. Menuntut suami atas pemerkosaan dalam perkawinan sambil tetap mempertahankan perkawinan yang sah adalah mustahi



## CHAPTER I

### INTRODUCTION

#### A. Research Background

Most Muslims believe marriage is a fundamental building block of life. Marriage is a contract between a man and woman to live together as husband and wife. The marriage contract is called a nikah. For most Muslims the purpose of marriage is to keep faithful to each other for the rest of their lives and have children and bring them up in the Muslim faith.

Marriage is mentioned many times in the Qur'an, which Muslims believe is the word of God, as revealed to the Prophet Muhammad, and therefore, they follow its teachings on marriage.

“ And among His signs is this, that He created for you mates from among yourselves, that you may dwell in peace and tranquility with them, and He has put love and mercy between your (hearts).” Qur'an 30:21

In Islam, marriage is not merely to make *halal* the love-relationship between a man and a woman. Instead, it is a sacred union where marriage itself is considered as an act of worship. The Prophet *s.a.w.* in a reliable hadeeth narrated by At-Tabarani, had said, “*Whoever marries has completed half of his faith. So let him have fear of Allah in the remaining half.*”

Since marriage is regarded as an act of worship to Allah, both husband and wife need to steer and lead their marriage life by observing

the commandments that Allah has laid down in respect of marriage. And in so doing, the marriage couple needs to always equip themselves with knowledge so that their marriage life is nurtured and moulded in such a way that is pleasing Allah and in line with the teachings of the Qur'an and Sunnah.

Marriage is a social institution as old as the human race itself. It may be defined as a relation between a man and a woman which is recognised by custom or law and involves certain rights and duties, both in the case of the parties entering the Union, and in case of the children born of it. Marriage has thus two main functions to perform: it is the means adopted by human society for regulating relations between the sexes; and it furnishes the mechanism by means of which the relations of a child to the community is determined.

The rites and ceremonies of marriage have been different with different peoples and in different ages. But these two functions mentioned above are common even where in marriage. It always implies the right of sexual intercourse as allowed and recognised by society and the duties of the parents in bringing up children.

Islam recognises this institution and accepts it as the basis of human society after purging it of all those evils which had penetrated it. Islam does not regard it as a union only for the gratification of sexual lust, but a social contract with wide and varied responsibilities and duties. The reason behind it is that, according to the Divine Faith, a woman is not a

plaything in the hand of man. But a spiritual and moral being who is entrusted to him on the sacred pledge to which Allah is made a witness.

The wife is, therefore, not meant to provide sensuous pleasure only to the male, but to fully co-operate with him in making the life of the family and ultimately of the whole humanity significantly meaningful. Hence under certain situation, the wife has right to refuse sexual intercourse when she is not under optimum condition. In this case, the husband should aware and respect the wife's request as long as the refusal not lead to the *nusyuz*. Forcible sexual intercourse between husband and wife is prohibited as it againts the principle of *musyawarah bil maaruf*. The violences occurs are similar to unconsensual sex which have same context with the definition of rape. However, rape within marriage or marital rape is not considered a crime in Malaysia in Indonesia.

The writer will then refer to the Malaysian legal definition of rape, which will explain Marital Rape as well. There are two types of rapes in the legal sense: forcible rape and statute rape. Forced rape is an act in which force and violence are not used to influence sexual intercourse. However, consent is not given in a legally binding sense because the person is still a minor (Penal Code, 1995: section 375(5)) or mentally incompetent (Penal Code, 1995: section 376) and thus does not have the right or ability to give consent.

The wife is not included in this category because it exclusively applies to women. To decide if a woman is a wife, one must look to Section 375 of the Canon of Violence. A woman who lives separately from her husband under a judicial separation order or a provisional order that has not been finalised, or who has been instructed to restrict sexual relations with him, according to Section 375, explanation 1.<sup>1</sup>

For the purposes of this section, the woman named in this section is not considered his wife. Explanation 2 then goes on to say that a Muslim woman who lives far away from her husband during the period of iddah, as determined by Sharia Law, is not considered his wife for the purposes of this Section.

Although there is no term "rape in marriage" in any law, S.375A of the Malaysian Criminal Code punishes a husband who has sex by intimidating and injuring his wife.<sup>2</sup> (Ki, 2018) The section states that "any man who causes injury, fear or death to his wife or another person during the course of a lawful marriage to have sexual relations with his wife, shall be punished by imprisonment for a period which may extend up to five years."<sup>3</sup>

In Indonesia, the 2004 Domestic Violence Eradication Act justifies domestic violence but does not specifically prohibit marriage. (Law Number

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<sup>1</sup> Malaysia Penal Code 375, Explanation 1

<sup>2</sup> Su Ki, H. T. (2018, November 21). *Marital Rape: What You Need To Know*. UMLR | University of Malaya Law Review. <https://www.umlareview.com/lex-omnibus/marital-rape-what-you-need-to-know>.

<sup>3</sup> Malaysia Penal Code 375A

23 of 2004 concerning Elimination of Domestic Violence). According to this deed, *rogol* in marriage can be punished with imprisonment of up to 12 years or a fine of 36 million rupiah.<sup>4</sup>

However, prosecuting such a case requires the victim's report (typically the wife). Indeed, victims of marital rape are hesitant to report offenders (husbands) to police investigators, which limits the number of marital rape cases resolved in court. What this means is that a man who finds himself in the situation stated above can turn to the code for help. This clause does not apply to innocent women who are not seeking legal assistance or are not in the process of divorce.

Rape in marriage can be defined as any unwanted sexual intercourse or penetration gained via coercion or without the consent of the wife and can be defined as any unwanted sexual intercourse or penetration achieved through coercion or without the consent of the wife. This includes wives whom their current or former husbands have raped. As the proverb states, "When an unknown person rapes a woman, she is left with a terrifying memory. When her husband rapes her, she is forced to live with the rapist." (Abuse Counselling and Treatment).

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<sup>4</sup> UU No 23/2004 Elimination of Domestic Act

**B. Statement Problems**

1. How can marital rape be considered a violation of women's fundamental human rights in Muslim family institutions?
2. How sexual intercourse within husband and wife that leads to the violence should be treated ?
3. How can the legislation system in Malaysia and Indonesia protect women who are suffering from marital rape?

**C. Objective of Research**

From the research questions, the researcher writes above is aim to obtain goal such as :

1. To find out how a brief overview of marital rape has violated women's fundamental human rights in Muslim family institutions.
2. To find out how Malaysia and Indonesia's Legislation system can protect married women from Marital Rape.
3. To conclude the best approach to tackle the issue that has been taboo to discussed.

**D. Benefit of Research**

1. The benefits of research are one of the efforts to develop a new concept of knowledge for writers, law student, law practitioners, and academicians.
2. Propose the alternative to raise awareness on how women are suffering from marital rape psychologically.

3. To ensure the women in Muslim households know their right in fundamental human rights.
4. To enlighten society in preserving gender equality in marriage.

#### **E. Operational Definition**

1. Marital Rape: Without the consent of the other person, a husband or ex-spouse engages in unwanted sexual practises. The married couple uses force to engage in such illegal sexual acts. Rape is defined as the act of forcing sexual intercourse on a woman or a daughter (Hornby, 1992). Rape also refers to a guy having an unlawful sexual relationship with his wife without her consent.<sup>5</sup>
2. Violation: The action of breaks or acts against something that should be treated with respect.
3. Women Fundamental Human Rights: It's frequently linked to women's rights movements like the right to bodily integrity and autonomy, as well as the freedom from sexual violence.
4. Muslim Family Institution: Family that nurtured with Islamic teaching by faith and practice.

#### **F. Method of Research**

1. Type of Research

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<sup>5</sup> Sexual Offences Amendment Act 1976

Qualitative research is the method that will be used in this study.

Qualitative research is used to address issues that necessitate a deeper understanding in the context of the time and place. As a result, the purpose of this qualitative study is to assess whether or not marital rape in Islamic Family Institutions is a violation of women's fundamental human rights. Apart from that, the writer has decided to research library research mode.

## 2. Research Approach

Based on the title that the writer proposed, the type of approach used normative approach. The normative approach that researchers use in viewing legal objects is related to the research conducted.

## 3. Law Material

In this research, the writer will be focusing on reviewing :

- a. Malaysia Penal Code Section 375 A - says that any husband who kills or threatens to kill his wife or another person during the course of a valid marriage in order to have sexual intercourse with his wife is punishable by up to 5 years in jail.<sup>6</sup> (Sabaruddin)

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<sup>6</sup> U. B., & Hj Sabaruddin, J. S. (n.d.). Section 375Exception, Explanations And Section 375A Malaysian Penal Code- Legitimising Rape Within Marriage : A Call for Reform, . *Section 375Exception, Explanations And Section 375A Malaysian Penal Code- Legitimising Rape Within Marriage : A Call for Reform,*.



- b. Undang-undang No 23 Year 2004 The Elimination of Domestic Act - determines the prison sentence or fine as a penalty of sexual violence against the wife.

## G. Previous Research

It is crucial to have previous research in every research to distinguish between current research and previous research in terms of perspective and argument. Hence, it will be beneficial to learn about different points of view that elaborate a similar theme as the research we conduct. Then, we will be able to facilitate upcoming research to obtain new information. The table below shows some of the previous studies that the author references. :

Name	Title	Similarities	Differences
Muhammad Ayub 07360026 UIN Sunan Kalijaga, Yogyakarta	Marital Rape dalam Tinjauan Hukum Islam dan UU No 23 Tahun 2004 Tentang Penghapusan Kekerasan Rumah Tangga	The raised theme and the Indonesia Law as one of the theoretical frameworks in this research.	The observation is made of comparative analysis of Islamic Law and Indonesia Law, while this dissertation is about the comparative analysis between

			Malaysia Law and Indonesia. Law.
Puji Tyasari 070216674 Universitas Airlangga, Surabaya	Marital Rape ( Studi Tentang Terjadinya Kekerasan Seksual dalam Perkahwinan di Surabaya)	The raised theme and the correlation with domestic violence.	The research methodology which using a quantitative and empirical approach. This dissertation also interviews in-person to gain more information. The context more to Indonesia, and there is no comparative analysis between law in this dissertation.
Nur Hamid	Perlindungan	The raised theme	The research is

05210017	Hukum Bagi	and	being
UIN Maulana	Waria	focused issue	viewed only
Malik	dari Tindak	about	from
Ibrahim, Malang	Kekerasan	legal protection.	Islamic Law
	Rumah		perspective.
	Tangga(KDRT)		
	dari Perspektif		
	Hukum Islam		

## H. Structure of Discussion

The writer has divided the discussion and topics into four chapters to make this research report more systematic and structured.

Chapter 1 is an introduction that includes a history of the research, a statement of the problem, the research objective, the benefit of the research, operational definition, the research method, and the structure of the discussion. The writer discussed Malaysian Penal Code Section 375 A and Indonesian Law UU Number 23 the Year 2004 on the Elimination of Domestic Violence.

Chapter 2 is devoted to a review of the literature, in which the author incorporates a theoretical framework pertinent to the research topic. The author has chosen to focus on Islamic sexual etiquettes, a detailed definition of marital rape, patriarchy in Malaysian and Indonesian households, the

Islamic perspective on marital rape, and psychological distress associated with marital rape.

In Chapter 3, the author will present the research findings and discuss how Malaysian and Indonesian legal systems can protect wives who are victims of marital rape. This chapter will educate women about fundamental human rights.

Finally, in Chapter 4, the writer will summarize the research findings and suggest her perspectives.

## **CHAPTER II**

### **REVIEW OF LITERATURE**

#### **A. Theoretical Framework**

##### **1. Women's Rights According to United Nations Sustainable Development Goals (SDG) Number Five :**

Gender parity is a legal requirement. The best hope we have for tackling some of the most pressing issues of our day is to realise this right, which includes the economic crisis and health-care shortages, as well as climate change, violence against women, and rising conflict. These issues affect women more than males, and women have the power to solve them through their ideas and leadership. Gender inequality continues to hold back far too many women, as well as our entire world.<sup>7</sup>

Despite progress, many obstacles remain: discriminatory social laws and norms persist, women remain under-represented in political leadership at all levels, and one in every five women and girls aged 15 to 49 report experiencing physical or sexual violence by a partner. within the last 12 months.<sup>8</sup> According to the 1993 Declaration of the United Nations Great Union on the Elimination of Assault Against Women, one out of every three

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<sup>7</sup> UN Women, Women and Sustainable Development Goals,  
<https://www.unwomen.org/en/news/in-focus/women-and-the-sdgs>

<sup>8</sup> United Nation, <https://www.un.org/sustainabledevelopment/gender-equality/>

women is still subjected to physical and sexual violence by an intimate partner.<sup>9</sup>

Many of the issues that disproportionately affect women and girls are rooted in gender inequality, such as domestic and sexual violence, lower wages, lack of access to education, and inadequate health care.

Therefore, SDG Number 5 is to achieve gender equality and empower all women and girls to be protected from sexual violence regardless of marital status, to have access to education and health care.

## **2. Marital Rape as Domestic Violence**

Marital rape, also known as marital assault, is when someone attacks another person without their consent. Lack of consent is required, although it does not have to be accompanied by physical violence. Rape in marriage includes domestic violence and sexual whipping. Although the nature of sexual interactions in marriage is legally recognised as a husband and wife's right, it is now considered commonplace in many societies around the world, and international agreements prohibit it.

(National Work on Rape, Abuse, and Incest) Battering rape happens when physical and sexual violence are perpetrated at the same time. Prey may be subjected to both physical and sexual attacks at the same time or in succession. Rape can be used as a type of "beauty" when it comes to

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<sup>9</sup> UN Women,  
<https://sustainabledevelopment.un.org/content/documents/2322UN%20Women%20Analysis%20on%20Women%20and%20SDGs.pdf>

physical whacking.

Forced rape - if physical violence isn't an option, this is the next best thing. The need for dominance and power over another person drives rape of a spouse, as it does all that is liked. Acting as if sex is from one side to the other, this seeks self.

Obsessive/Sadistic Rape – obsessive or sadistic rape refers to memories of torture or sexual activity. This type of marital rape is typically violent and results in injuries to the victim.

### **3. Marital Rape According to Islamic Perspective**

In Al Quran and As Sunnah, sexual relations clearly have a place and are a natural component of nature, as determined by Allah. In his writings on the ethics of sexual relations, al-Ghazali states that intimate physical relationships should not occur unexpectedly. It is necessary to pave the way till the husband and wife feel stimulated.

This illustrates that sex must be done with mutual permission and will, which are noticeably absent in forced sex/marital rape. The husband does not seek his wife's permission before engaging in sexual activity.

The structure of the husband-wife relationship within the institution of marriage has been criticized for favoring the husband over the wife. The traditional doctrine that a husband deserves sovereignty over his wife's body is no longer accepted. It is proposed that the wife have complete sovereignty over her own body. The initial concept has had a significant impact on the

sexual relationship between husband and wife. The wife should have the same right to sexual relations as her husband.

Based on the following Hadith, which husbands commonly misunderstand It is widely believed that a wife who refuses to have sex with her husband would be cursed by an angel:

Abu Hurayrah reports from the Prophet (saw): *“When a husband calls his wife to bed, and she refuses and [as a result] the husband spends the night in anger, then angels curse the wife all night till dawn.”* (Bukhari, No: 3065)

In order to understand this Hadith, the following points need to be understood: To begin, married couples maintain each other's chastity by offering legitimate ways to satisfy sexual desires. The family institution's sustainability depends on the preservation of chastity. As a result, the Almighty despises anything that threatens virginity.

Second, a man is the recipient of the same orders mentioned in this hadith. This is demonstrated by the Qur'an's directive of *ila* (2:226-7), in which pre-Islamic Arabs swore to end sexual relations with their wives out of anger.

This is referred to as *ila'* in Islamic legal terminology. It is self-evident that married life is not always characterized by harmony and cordiality. At times, tensions and strains develop, resulting in discord and estrangement. However, the Law of God disapproves of discord that causes



a husband and wife who are legally married to remain practically estranged from one another as if they had ceased to be spouses.

Thirdly, the reason for the refusal by the husband or wife must be considered. If one of them is fatigued, sick, or simply not in the right attitude or frame of mind, it does not mean that the Almighty will punish them. When a partner begins to consciously avoid such normal demands of the other, the attitude becomes suspect when they are believed to be *nushuz*.<sup>10</sup>

When a wife is in a state of *nushuz*, the husband can address it with the following three steps:

As a matter of fact, the advice was given calmly and affectionately. The goal is to manifest alienation and rebellion with love, compassion, and unity in the command of Allah Most High. This advice is only valid as long as it is under the Shari'a, according to all scholars, both the beginning and the end. Otherwise, according to the principle, "there is no obedience to the created if it involves disobedience to the Creator." (Hadith Sahih) It is narrated in the Sunnah that the Prophet said:

*"If you are afraid of nushuz on their part, advise boycotting them in their beds and striking them in a non-injurious manner..." [Musnad Ahmad]*

Verbal admonition may not always be enough to bring her condition estrangement and disobedience to a stop. It could be due to an excessive

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<sup>10</sup> A. Dr. Shehzad Salem, A Wife, Cannot Refuse Sex To The Husband, <https://www.newageislam.com/>, August 31, 2015

emotion, a defiant reaction, or she could be tricked into thinking she is superior than her spouse because of her position, wealth, or attractiveness.

If the husband allows his emotions to get in the way of his wife's advice, he may be foolish to blame this scenario. However, boycotting him and keeping him out of "bed" was the next step in an effort to end his worries.

Linguistically, "boycott" (al-hajr) is defined as "avoiding, cutting off, or not relating to the person being boycotted." Allah advises this by adding the phrase "in bed" (fi al-madhaji '). It may be ignoring him completely, sleeping somewhere else, or sleeping in the same bed as him but keeping a safe distance and not talking to him.

The Qur'an and the sunnah, the scholars agree, and common sense all support its validity and are used as a method of disciplining estranged wives when words of advice fail to produce positive results. Allah stated:

*"...as well as avoid them in sleeping areas..." [An Nissa : 34]*

The verse in Surah An-Nisa is unclear as to whether it means to completely avoid the bed and bedroom and sleep somewhere else, or to avoid them while in bed. This strategy is better since it avoids disclosing the problem to children and other family members while also creating a more conducive climate for true reconciliation. Boycotting her in speech is permissible, but it should not last more than three days, according to a hadith

in Sahih Muslim: "*It is not permissible for a Muslim to boycott his fellow Muslim for more than three nights.*"<sup>11</sup>."

He can boycott her in bed for as long as he believes it will still result in her ceasing her nushuz activities, but not for more than four months. This is the most powerful stance among the scholars' statements. It's based on Allah's time restriction for al-Ilaa', which is when a man decides to end his marriage to his wife.

To address a problem, roughness and toughness may be required in some instances. This is because some people are unable to be corrected just by good behaviour and mild guidance. Kindness and softness only serve to enhance the arrogance and ignorance of such people. When confronted with adversity, some of these people calm down and relinquish their defiance. In general, it is not advised for a husband to strike his wife, and it is reported that the Prophet said of those who do so, "*they are not the best of you.*"

However, violence, including assault, may be an antidote that cannot be enjoyed with a partner back in love and affection. This can be a positive antidote and spiritual discipline in these cases. This is not meant for retaliation or punishment. Whoever does it this way is the sin and transgression of his wife. Rather, it aims to find what has become unnatural and stop the disturbance. It should be stated unequivocally that "beating

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<sup>11</sup> Sahih Muslim

your wife is not permitted in Islam." The striking, as mentioned above, should be no more than a tap with a Siwak.<sup>12</sup>

Mu'awiyah ibn Haydah related: "I asked, "How should we approach our wives and how should we leave them, Apostle of Allah?" He replied: Approach you whenever and whenever your heart, give her (your wife) food when you take food, wear her (your wife) when you wear clothes, don't dirty her face, and don't hit her.<sup>13</sup>

Allah's Apostle, Abu Huraira (Allah be pleased with him), was quoted as saying: "If a believer in Allah and the Hereafter witnesses something, he should either speak positively about it or remain silent about it. Women are made up of ribs, and the top of the rib is the most crooked section of the rib. Be gentle with them. You'll shatter it if you try to straighten it, and if you leave it alone, the crookedness will remain. As a result, treat women with respect.<sup>14</sup>

According to Islamic scholars, when a man desires sexual intercourse with his wife during the menstrual cycle, in an inappropriate sexual state, or during the fasting period of Ramadan, this is called rape in marriage. God gives women the right to stay away from their husbands, saying, "And they ask you about menstruation." The presumption is dangerous, so avoid your wife during menstruation. And wait until they are holy before approaching them. And if they have purified themselves, then

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<sup>12</sup> It is translated as teeth cleaning twig—a similar function to a toothbrush.

<sup>13</sup> Sunan Abu-Dawud, Book 11, Marriage (Kitab Al-Nikah), Number 2138

<sup>14</sup> Sahih Muslim, The Book of Marriage (Kitab Al-Nikah), Book 008, Number 3468)"

go to them from the place which Allah has appointed for you. Allah loveth those who repent and purify themselves.<sup>15</sup>

In Islamic law, a wife has the right to refuse sexual intercourse in certain circumstances. During menstruation and parturition, fasting and pilgrimage, she is in the advanced stage of pregnancy, if she believes the husband is suffering from the sexually transmitted disease when she is divorced ( Talaq Bain ) and throughout the Iddah, and when a wife is asked to perform abnormal sexual Act such as threesome; sexual encounter involving three people is not permanent. This is a violation of basic modesty norms.

According to the Islamic scholar, a man's sexual intercourse with his wife should be conducted with intimacy and affection. It regarded such amicable behavior as a sign of piety.

*“Your wives are a place of sowing of seed for you,” God says in the Quran, “so come to your place of cultivation however you wish and make an introduction for yourselves.” Moreover, be afraid of Allah, knowing that you will meet Him. And bring good news to the believer. [223 Al Baqarah]*

A husband and wife's marriage is sacred. Both spouses have conjugal rights over the other and are responsible for satisfying the sensual appetites of the other. Spousal rape in the most ordinary circumstances was already prohibited under Islamic law. Unless she has reasonable grounds to do so, a wife cannot refuse her husband as long as the wife's consent to

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<sup>15</sup> Holy Quran, Al Baqarah, Verse 222

sexual relations with her husband is perpetual. On the other hand, Islamic Law provides remedies for harm caused by extramarital affairs.

#### **4. Psychological Distress Associated with Marital Rape**

Because marriage is a part of our civilization, marriage rules must be a serious concern. This will solve the breakdown of marital and family relations, which is causing a lot of problems in Malaysia<sup>16</sup> and Indonesia. Rape victims experience both short -term and long -term psychological effects. Post-traumatic stress disorder (PTSD), depression, difficulty sleeping, eating disorders, and dissociative identity disorder are common emotional and dissociative identity disorder (DID).<sup>17</sup>

However, when compared to non-marital rape, marital rape has a more lasting and broader impression for women. They will believe that their husband has cheated on them. They will constantly fear another attack and will no longer believe that their home is a safe haven. As a result, women will lose faith in their marriage. If there are children involved, the relationship between their parents will make an impression on the children when they grow up.<sup>18</sup> The consequences of rape in marriage can occur, as the victim has to deal with the perpetrator on a daily basis. In addition, they

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<sup>16</sup> Marital Rape: What You Need To Know, <https://www.umlawreview.com/lex-omnibus/marital-rape-what-you-need-to-know>, November 21, 2018

<sup>17</sup> Gluck, Samantha, "Effects of Rape: Psychological and Physical Effects of Rape," Healthy Place, May 1, 2018, <<https://www.healthyplace.com/abuse/rape/effects-of-rape-psychological-and-physical-effects-of-rape/>>

<sup>18</sup> Nor Aini Abdullah, "Marital Rape- Domestic Violence?", (1995) 2 *Malayan Law Journal* Articles lvii.

are placed in a position where they have to give help so that the marriage does not collapse, thus inviting social stigma. As a result, the dilemma silences most victims, and their chances of recovery are destroyed before they can begin.

## **5. Sexual Etiquette in Islam**

The husband must realise that a woman's sexual desire takes longer to manifest but is quite powerful once it does, whereas a man is rapidly aroused and satiated. Finally, it is worth noting that Islam's emphasis on both man and woman satisfaction indicates Allah's (SwT) justice and fairness. Indeed, it is repeatedly stated in the Noble Qur'an *that man and woman were created from a single soul*.<sup>19</sup>

However, the following sexual acts are considered makruh<sup>20</sup> in this context:

While anal intercourse is legal with the wife's consent, it is a highly despised behavior. According to Zaid Ibnu Sabith, a person asked Saidina Ali (as): "Can you approach a woman from behind?" "Be down with you!" Saidina Ali (as) said. All degrades you in this manner (of entering a lady). Have you not heard your Lord's words as narrated by Lut to his community: "What! Do you commit an atrocity that no one else in the world has ever committed?" Some explain this behavior by quoting the following phrase from the Qur'an: "Your women are a tillage for you; so, come to your tillage anytime you choose."

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<sup>19</sup> Sūrat al-Nisā, Verse 1; Sūrat al-Zumar, Verse 5, Sūrat Luqmān, Verse 28; Sūrat Naḥl, Verse 72

<sup>20</sup> Translated as discourage

Additionally, making love standing and without covering violates Muslim adab and etiquette. “The husband and wife must not indulge in sexual relations in the manner of two donkeys clinging together, because if they do, the Angels of mercy will flee from them and Allah's kindness will be taken away from them.”

Conclusion: This can be concluded that sexual Act as a threesome or, in Arabic, *wajs* is not permissible in Islam. According to Islamic scholars :Hasan al-Basri stated that the Sahaabah and senior Taabi'een considered wajs (sexual intercourse) makruh (a highly disliked act). According to earlier scholars, the term "makrooh" denotes something haraam.

Ibn Qudaamah (may Allah have mercy on him) stated that if two wives agree to share a house, this is permissible because they each have the right to their own house but may give it up. Similarly, they may agree to let him share a bed with them. However, suppose they agree to allow him to have sexual relations with one of them while the other is looking. In that case, this is not permissible, as it is despicable and inappropriate, and it does not become permissible even if they agree.

According to al-Hajaawi, the author of *Zaad al-Mustanqi*, it is makruh to have intercourse in public. Shaykh Ibn' Uthaymeen commented on these words, saying: "It is strange that he restricted himself to the term makruh." This relates to two points. The first is having intercourse in which both partners' awrahs are visible. Limiting oneself to asserting that this is makruh is



undoubtedly a mistake, as it is obligatory to cover the awrah. If it is in a location where their 'awrahs can be seen by others, it is unquestionably haram.<sup>21</sup>

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<sup>21</sup> <https://islamqa.info/en/answers/26265/having-intercourse-with-one-wife-in-front-of-the-other>

### **CHAPTER III**

#### **DISCUSSION OF RESEARCH FINDING**

##### **a. Marital Rape in Malaysian Penal Code Section 375A**

Marital rape is not criminalized in Malaysian law. However, Section 375A of the Malaysian Penal Code punishes a husband who solicits sex by intimidating and injuring his wife. As stated in the Section:

*“Any man who causes bodily harm, fear of death, or bodily harm to his wife or any other person in order to have sexual relations with his wife shall be punished with imprisonment for a term not exceeding five years.”*

Regrettably, S.375A does not mention consent, which means that consent plays no role in delegitimizing intercourse. The contract of matrimony presumes that a married woman has consented to marital intercourse, and that consent cannot be revoked later because marriage is permanent. Irrevocable consent, on the other hand, should not be utilised to strip a woman of her bodily autonomy.

Conjugal rights are shared by both spouses. On the other hand, a wife is a self-contained entity with her own volition. She has the right to say "no" if she does not wish to have a marital relationship with her spouse. Rape occurs when a husband forces his wife to engage in sexual behaviour that is not in his best interests and without her permission. Marital rights have limitations that neither the husband nor the wife can ignore, and they do not necessitate the approval of the other.

Articles 375 and 375A of the Malaysian Penal Code argue in opposition to articles 5 and 8 of the Federal Constitution in this regard, as will be discussed in greater detail later. Additionally, to safeguard the sanctity of marriage and women's respect, it is necessary to ensure that violence and transgression of any kind are not tolerated in the foundations and foundations of our social framework of family units, as well as to provide additional protection to acknowledge and affirm this in policy, law, and enforcement.

Penal Code Sections 375 AND 375A, Law 574 The definition of rape in section 375 is as follows: A man commits "rape" if, except in subsequent cases, he engages in sexual intercourse with a woman in a state that fits one of the following descriptions:

a. Against her will; b. Without her consent; c. Obtained through the use of his position of authority over himself or through a professional or other trust relationship with him; d. Without her consent, while she is still under the age of 16;

The exception to Section 375: Sex between a man and his wife by lawful marriage under written law now applies or is recognized as lawful in the Federation instead of rape. This is followed by an explanation of why a Muslim woman living far away from her husband at the time of iddah is not deemed a wife under this provision if she has an order for separation of the judiciary or a judgement that has not been finalised.

A husband who causes bodily injury or the threat of bodily harm to his wife or another person in order to have sexual intercourse with his wife is subject to a five-year prison sentence obtained by his position of control over himself, a professional relationship, or omission, with the exception of Section 375A, which was added in 2006.

Sexual intercourse between a man and his wife by legitimate marriage under written law is now recognised as lawful rather than rape in the Federation, according to the exception to Section 375. This is followed by an explanation of why a Muslim woman who lives apart from her husband at the time of iddah and has a court order or decision of separation that has not been made absolute is not deemed his wife under this Section.

In addition to the 375A, which was added in 2006, it stipulates that any husband who causes bodily injury or the threat of bodily harm to his wife or another person in order to have sexual intercourse with his wife is subject to a five-year prison sentence.

**b. Marital Rape in Law No. 23 of 2004 concerning the Elimination of Domestic Violence - Indonesia**

The institution of marriage regulated in the Undang-undang Perdata is not just a forum for sex between men and women but relatively more comprehensive than that. In fact, as a place for husband and wife to form a happy family, a place to educate and raise children, a place to share family

affections and give each other family affection, and a place of ownership of property.<sup>22</sup> (Supramono, 1998)

From the point of view of terminology, there are several opinions in defining marital rape.<sup>23</sup>

1. Bergen defines sexual intercourse performed either vaginally, orally or anal by coercion, threats or performed when the wife is unconscious.
2. Elli N. Hasbianto defines marital rape as coercion in sexual intercourse, coercion of sexual tastes regardless of wife satisfaction.
3. Farka Cicik classifies marital rape in three categories: coercion of sexual intercourse when the wife is unprepared, sexual intercourse accompanied by torture, and coercion of sexual intercourse in a way that the wife disagrees.
4. Nurul Ilmi Idrus, in her research report on Bugis society, defines marital rape through the experience of respondents who are victims of marital rape, namely sexual intercourse by force, by threat, by imposing their tastes and sexual relations using illegal drugs or drinking alcohol.

Based on the understanding of marital rape that has been mentioned above, it can be mentioned about the forms of marital rape as follows:<sup>24</sup>

1. The wife does not desire sexual intercourse because of the unpreparedness of the wife in the physical and psychic form.

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<sup>22</sup> Gatot Supramono, *Segi Hukum Hubungan Luar Nikah*, Jakarta: Djambatan, 1998, hlm 133

<sup>23</sup> Maria Milda. Marital Rape, *Kekerasan Suami Terhadap Istri*, Yogyakarta: Pustaka Pesantren, 2007, hlm. 12

<sup>24</sup> *Ibid.*

2. Sexual intercourse in a manner that the wife does not desire; oral, anal, and so on.
3. Sexual intercourse with threats of violence or violence results in the wife suffering minor injuries or severe injuries.

These three forms are not meaningless in time will be more variants of their nature.

In Indonesia, the issue of marital rape is still a debate. The Criminal Code (KUHP) does not explicitly mention its legal status and sanctions, so it lacks a significant response to the problem that can harm women physically. According to Elli Nurhayati, repeatedly, victims of their husbands' rape will be infected with several characters.

1. Inferior ( feel inferior) and not confident;
2. It is often and always feels guilty because she makes her husband enrage; and
3. It suffers from reproductive disorders due to feelings of stress or stress, such
4. In the Elimination of Domestic Violence, Domestic Malignancy is any action against a person, especially a woman, that results in physical, sexual, psychological pressure or suffering. Even though there is no sexual relationship, the law defines violence as forced intercourse against someone who lives in the household or forcing a relationship against someone within the scope of his household with other people for commercial and

certain purposes in section 8 of the Deed on the Elimination of Domestic Violence.<sup>25</sup>

Sexual violence, as referred to in section 5 letter C, includes:

- a. Coercion of sexual relations committed against persons who live within the size of a family's living quarters
- b. Coercion of sexual relations with one with another person for commercial interests within the boundaries of his household and specific purposes."

Any act against a person, especially a woman, that results in physical, sexual, psychological, or domestic abuse or suffering, including threats to conduct actions, coercion, or extortion property, is defined as domestic violence in article 1 Elimination of Domestic Violence. "In a domestic setting, freedom does not apply." The definition expands on the definition of domestic abuse against women found in the Declaration on the Elimination of Violence Against Women.

Any act based on gender differences that causes or may cause physical, sexual, or psychological harm to women, including threats of such acts, arbitrary coercion, or deprivation of liberty, whether occurring in public or private life, is considered "violence against women "With the Declaration on the Elimination of Violence Against Women. Women's violence must be recognised and addressed, including but not limited to:

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<sup>25</sup> *Ibid*

1. Batterings, sexual abuse of domesticated children, mental-related violence, rape in marriage, destruction of female genitalia, and other traditional practises that are harmful to women, violence outside of husband and wife relationships, and violence related to exploitation are all examples of domestic violence;
2. Rape, sexual assaults, harassment, and sexual threats in the workplace and in educational institutions, as well as human trafficking and coerced usage, are all manifestations of physical, sexual, and psychological violence that exist in the larger community;
3. Physical, sexual, and psychological violence is committed or justified by the State, wherever it occurs.

Forms of domestic violence include:<sup>26</sup>

1. Physical abuse is defined as any act that causes pain, disease, or serious injury (vide section 6 of the Elimination Of Domestic Violence). Physical violence indicates that the injuries found were not caused by accident but resulted from beatings with objects or multiple assaults. Forms of physical violence can be; strangled, gagged, pinched, shot, crushed, bitten, strangled, soaked, watered, tied, pushed, thrown, dragged, tackled,

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<sup>26</sup> Maidin Gultom, *Perlindungan Hukum Terhadap Anak dan Perempuan*, Bandung: Refika Aditama, 2012, hlm 16



punched, crushed, kicked, trampled, slammed, banged, disabled, stabbed, beaten, foamed/ grounded, slashed, ironed, electrocuted, shot, fought, groped, told to push up, run, told to walk with knees.

2. Emotional abuse is an act that will result in, belief, loss of ability to act, feelings of helplessness or severe psychic suffering in a person (vide 7 Elimination Of Domestic Violence) such as not caring, discriminating, terrorizing, threatening, or blatantly rejecting the child. Other forms of mental violence: bullied, seduced, nagged, spitted, spat on, abused, threatened, expelled, absorbed, dried, held captive, forced to write and memorize, forced to clean the toilet/work, forced to remove grass and work.
3. Sexual violence refers to any sexual activity, the form of which can be assault or without assault. The category of assault inflicting suffering in physical injury, sexual violence without assault suffers emotional trauma. Forms of sexual violence: seduced, poked, forcibly hugged, squeezed, forced masturbation, oral sex, anal sex, and raped.
4. Domestic Abandonment is the Act of every person who leaves a person within the scope of his household. Instead, under applicable law, he or she is obliged to provide life, care or education to the person (see section 9 paragraph (1) Elimination

of Domestic Violence), including the actions of anyone who causes economic dependence by preventing or restricting decent work. inside or outside the house until the victim is under the control of that person (see article 9 paragraph (2) Abolition of Domestic Violence).

Sexual violence is stipulated in section 5 of the Elimination Of Domestic Violence, which reads: " Domestic violence against members of one's own family is illegal by law, in a manner;

1. physical violence,
2. psychic violence,
3. sexual violence or;
4. household abandonment.

The Forms of Domestic Violence include violence by:

1. Physical violence, in section 6, is defined as a behaviour that causes pain, disease, or serious injury.
2. Psychical violence, in section 7, is defined as an act that causes a person to experience fear, loss of confidence, loss of ability to act, helplessness, or extreme psychic distress.
3. Sexual violence, in section 8, includes:
  - a. coercion of sexual intercourse committed against the person settled within the scope of the household.

- b. Coercion of sexual relations with one within the scope of his household with another person for commercial purposes or particular purposes.
4. Domestic abandonment, in section 9 states that:
- a. It is against the law for anyone to abandon a family member.  
In contrast, he is obligated to offer life, care, or care to that individual under the legislation that applies to him or her as a result of consent or agreement.
  - b. As referred to in paragraph (1), any person who causes economic dependency by limiting or prohibiting decent employment inside or outside the family such that the victim is under that person's control is considered abandoned.'

In contrast to Mansour Fakhri's opinion, departing from gender analysis mentions three forms of violence against women:

a. Personal violence

In everyday life, women suffer and become victims of physical and mental violence. This suffering is generally challenging to express because it is not well documented and official. The most severe violence is rape, including marital rape. When a person is compelled to get sexual services without the consent of a partner, this is known as forced rape. This unwillingness is often unexpressed, and it is due to a variety of factors, for example, fear,

shame, economic, social, or cultural compulsion, or choice.

b. Domestic violence

This violence is generally the most difficult to disclose because, in addition to being considered an internal domestic affair, the community tends to blame the victims more. These include beatings and similar violence against family members (wives and children), obtaining education and health, the application and double standards of boys and girls, forced marriage, and subordination in the entire process of taking legal advice in the household.

c. Public and state violence

Violence against women outside the home and society is generally in the form of social and cultural sanctions and discrimination. Included in this violence are coercion, sterilization and Family Planning programs, prostitution, and pornography.

According to the Elimination Of Domestic Violence, marital rape is violence that violates human rights. Domestic violence must be abolished. The government should protect marital rape victims. In the Elimination Of Domestic Violence, sexual relations do not pay much attention to pleasure

in sex. However, the coercion of unnatural or unwelcome sex is marital rape. In other words, the husband should not impose a style variation of sex that the wife dislikes and nasty sex. Sexual violence, in particular, includes acts of compulsion of sexual intercourse, coercion of sexual relations in an unnatural or unwelcome manner, and coercion of sexual relations with others for commercial or special goals.

Domestic Violence is prohibited in the Kingdom. The Law defines sexual violence as coercion of sexual intercourse carried out against someone who lives in a household environment or forced sexual intercourse against someone who is in his household with another for commercial or specific purposes, despite the fact that it does not explicitly mention the term. Certain activities can be classified as sexual violence based on that definition.

Section 8 states that:

"Sexual violence as referred to in section 5 letter c includes:

1. Coercion of sexual relations conducted against persons who live within the scope of the household,
2. Coercion of sexual relations with one within the scope of his household with another person for commercial purposes and/or certain purposes."

Then the criminal provisions are listed in sections 46 and 47.

In section 46 reads:

"Anyone who commits a sexual violence act as defined in Article 8 letter a faces a maximum sentence of 12 years in prison or a fine of Rp36,000,000.00."

Section 47 reads :

"Every person who forces the one who lives in their household to do sex as it is mentioned in Section 8 point b will be punished under the terms of cell punishment for 4 years at short and punished for 15 years at maximum amount of time, or have to pay the fine at minimum costs for Rp. 12.000.000,00 or Rp. 300.000.000,00 at maximum costs."

Therefore, Section 48 that focused on marital rape mentions that any harms mentioned in Section 46 and Section 47 caused the wounded victim would not get hopes to be healed at all, got the traumatized brain or mental disorders for a short amount of time at 4 (four) weeks continuously or 1 (one) year uncontinuously, the mortality of fetus in pregnancy, or causing disfunction of reproduction organs, got punished in jail for a short amount of time at 5 (five) years and 20 (twenty) years at most or minimum fine Rp. 25.000.000,00 (twenty-five million rupiahs) and maximum fine at Rp. 500.000.000,00 (five hundred million rupiahs).

If we look more profound about the fine of marital rape, exactly that mentioned at Section 46 at Rp. 36.000.000,00 and Section 48 at Rp. 25.000.000,00 to Rp. 500.000.000,00 have been deviating the terms of Section as stated in KUHP that does not declare the amount of fine in sexual

harms excluding rape. This fine gives the impression that marital rape crimes can be cured and replaced with a certain amount of money with the nominal mentioned. Although in terms of protection, the Elimination Of Domestic Violence is broader compared to the KUHP.

There are more differences in the enforcement of marital rape in Section 48 of the Elimination Of Domestic Violence and rape in the KUHP wherein Section 291 of the KUHP there is a burden and addition of the principal criminal that reads as follows:

1. If any of the crimes under Sections 286, 287, 289, and 290 result in serious injury, maximum imprisonment of twelve years at a maximum amount of time.
2. If any of the crimes under Sections 285, 286, 287, 289 and 290 result in death, shall be sentenced to a maximum of fifteen years imprisonment.

In addition to the essential criminal sanctions, additional criminal charges that can be imposed against marital rape follow further criminality in the Elimination Of Domestic Violence, be it physical, psychic, sexual or domestic abuse, where the judge may impose additional criminal sanctions under Article 50 which states:

"In addition to the criminal as referred to in this Section the judge may impose additional crimes in the form of:

1. Restrictions to perpetrator movement aimed at bringing predatory perpetrators within a particular distance and at

a set distance, as well as barriers to specific perpetrator rights;

2. determination of perpetrators to follow counseling programs under the supervision of certain institutions."

Additional criminal, marital rape guided by Law No. 23 of 2004 is different from additional crimes against rape in the KUHP guided by Section 10 of the KUHP on principal and additional criminal types.

The principal criminal consists of:

1. the death penalty,
2. imprisonment,
3. confinement,
4. the penalty of fines.

Additional crimes consist of:

1. confiscation of certain goods
2. , revocation of certain rights, and announcement of the judge's decision.

Related to section 46, section 53 also stated that the crime of sexual violence by the husband against the wife or vice versa is a complaint. So based on the article, then marital rape is a complaint. As for the complaint of a new type of criminal Act can be prosecuted if there are complaints from victims or those who are harmed. There are two types of complaints offense, in this case, namely offense complaint relative (relative klachdelict) and absolute complaint (absolute klachdelict). For



absolute complaints can only be done by the victim himself is different from the complaint offense.

The 23/2004 Elimination of Domestic Violence Act explicitly determines the prison sentence or fine as a penalty of sexual violence against the wife. The size of the weight of the sanction is given according to the impact seen on the victim. Marital rape is a form of absence of gender equality in the household.

**c. Marital Rape As A Violation to Woman Fundamental Human Rights In Muslim Family Institution – The Influences of Socio-culture Malaysia and Indonesia and Islamic Teaching**

Based on the theoretical framework proposed and legal analysis based on Malaysian and Indonesian legislation—as a result of the research conducted—the author uncovered some important findings that should be noted, including the following:

Malaysia and Indonesia are two countries that have many things in common with one another. Malaysia and Indonesia have a variety of traits, such as historical, cultural, and religious frames of reference that are shared by both countries. Indonesia has a far higher proportion of Muslims than Malaysia in terms of population. Indonesia is home to more than 12 percent of all Muslims on the planet.

Despite the fact that Indonesia has a larger Muslim population than Malaysia, Malaysia's adoption of Islamic Law is considerably broader and more formalised than Indonesia's. It is vital to compare and contrast the natural environments, races, religious practises, cultures, and customs of Malaysia and

Indonesia in order to understand the differences in the depth and breadth of law enforcement in the two countries.

Marital rape has become a difficult topic in Malaysia and Indonesia, which are largely Muslim countries with strong and conservative cultures and practises. According to patriarchal teachings, wives are completely owned by their husbands, and the husbands are the ones who pay mahr, the phrase of marital rape is practically impossible to comprehend in the eyes of the majority of traditional and patriarchal households (dowry).

Because women are emotional beings, they are willing to give up their right to safeguard their family name, the prestige of their husbands, and the welfare of their children in exchange for the protection of others. A great sense of loyalty can be felt by certain women, who believe that they are the reason their husbands behave in a certain way and that it is their job to comply with their husband's actions and decisions.

According to Islamic teaching, wives are not their husbands' property or slaves, but rather partners who require tender care and guidance throughout their lives. He states the following in Surah Al Baqarah verse 223 of the Qur'an:

*"Your women are a place of sowing seed for you; so, come to your area of cultivation whenever you want and sow [righteousness] for yourselves there. And be afraid of Allah, knowing that you shall come face to face with Him. And bring good news to those who are already believers."*

Similarly, the Qur'an declares in Surah li-' Imrah, verse 14, where He says:

" The love of (worldly) desires, especially those of women and children, has been made to appear decorous in the eyes of mankind."

These verses from the Quran illustrate that extreme patriarchal and conservative elements cannot be simply justified by true Islamic teaching in order to attain one-sided contentment, as they claim. How the doctrine of *mu'syarah bil ma'aruf* can be used in sexual affairs is by respecting the need and willingness of the individual.

Patriarchy is a term that refers to social institutions and behaviours that give men power over women's reproductive, sexual, and reproductive-related activities (Walby 1990). These uneven power interactions between men and women are amplified even more as a result of the strong socially imposed masculinity and feminine character stereotypes that are prevalent. Consequently, patriarchy teaching has been perpetuated in Malaysian and Indonesian households as a result of cultural and customary practises, as well as a misinterpretation of religious instruction.

It has been documented for many years that domestic violence exists, and patriarchy, which argues for the authority of men over women, has been around for a long time, according to Dobash and Dobash (1979). An attitude or set of ideas that favours male dominance over female dominance is referred to as patriarchy, and it is defined as follows:

Apart from that, patriarchal ideologies function by allowing males the capacity to exercise authority in their homes, so perpetuating and supporting the power imbalance between men and women, as well as the patriarchal social



unnatural state of their being, which changes into a natural state when they are united in marriage and therefore brought closer to each other physically, psychologically, and emotionally, as well as when they have children together.

Both man and woman are joint heirs to the grace of life, and they will not be able to enjoy the true grace of life unless they have developed a very close and personal type of relationship with one another. "It is He who formed you from a single soul, and it is He who made his bride from the same soul, so that he would find solace in her" (vii. 189). The term "comfort" refers to much more than a simple sense of well-being. It is not overstated to say that the entire Islamic vision of marriage is infused with spiritual and moral ideals, and that the married bond must, as a matter of necessity, be elevated in both the individual and social spheres.

In Islam, the union of the sexes has been purified and the joy of the married relationship has been preserved by the strict prohibition of any form of extra-marital relationship. The Holy Qur'an encourages people to marry because it is the most effective way for them to live a good life devoid of immorality and emotional restraint, according to the Prophet Muhammad. They (your women) are like garments to you, just as you (your husbands) are like garments to them, according to the Qur'an (ii. 187). The mutual relationship between a husband and wife is expressed here in words that could not be topped for their beauty. The following is an accurate depiction of the relationship between the two parties. The husband and wife are there for each other's mutual support, mutual comfort, and mutual protection, and they should be able to fit into each other like clothes do.

Also stated clearly in the Holy Qur'an is the fact that this union is not a temporary relationship between two individuals of opposing sexes; rather, it is a permanent and enduring relationship in the sense that both parties should make every effort to live their lives in perfect harmony while also fulfilling the obligations placed on them by entering into this sacred contract.

It is also pointed out in the Holy Qur'an that sexual enjoyment in married life is not intended solely for the satisfaction of bodily lust, but must also be oriented toward some higher goals. The wives are compared to cultivable land, which is ploughed for the purpose of sowing and reaping the harvest (in the form of kids), rather than simply for sensual gratification.

The final section of the verse refers to even higher and more sublime ends, which tell us that even in the midst of carnal pleasures, one should not lose sight of one's moral and spiritual responsibilities; rather, one should be more conscious of them when one is enjoying physical pleasures, because these are the moments when one's fear of the Lord and accountability in the Hereafter is most likely to be blurred or erased from one's mind.

According to Section 375(b) of the Penal Code, a man is considered to have committed rape if he engages in sexual contact with a woman without her permission. The Penal Code also contains Section 375A, which specifies the punishment for a husband who intentionally injures his wife in order to engage in sexual relations with her.

Unfortunately, the topic of consent is not addressed at all in S.375A, which means that consent does not play a role in delegitimizing sexual relations in any

way. When it comes to cases of marital rape, consent should be given even more consideration.

Malaysia is still bound by the old English text that a married woman has given her agreement to marital intercourse by signing the contract of matrimony, and that consent cannot be retracted later because marriage is a lifelong commitment in Malaysia. However, the author believes that there should not be a concept of irrevocable consent because it deprives a woman of her bodily autonomy, which is contrary to feminist ideals.

Both spouses have conjugal rights towards each other, according to the author, who does not deny this. A wife, on the other hand, is an individual with her own free will. The freedom to say "no" when she does not wish to engage in sexual relations with her husband is protected under the law. When a husband still forces his wife to engage in sexual relations, this is seen as rape because he does so against her will and without her consent.

Both husband and wife should respect the bounds of their conjugal rights, especially if no consent is present at the time of the marriage ceremony. Overall, consent should play an important role under S.375A of the Penal Code because it is the rationale for why marital rape should be criminalised in the first place.

In accordance with Section 375A of the Penal Code, the husband who commits the crime is only penalised with imprisonment for a time that may exceed to five years. The clause does not specify a minimum degree of punishment, which

is puzzling given the possibility that convicted perpetrators will escape with only a short sentence.

Of course, it is still up to the Malaysian courts to make a decision based on the circumstances and facts of each individual instance involving marital rape. The truth remains, however, that the maximum punishment is only five years in prison, which is still a relatively light sentence.

Alternatively, S.375B of the Penal Code, which establishes the sentence for perpetrating gang rape, could be contrasted to this provision. It specifies that "anyone who commits gang rape must be punished with imprisonment for a term of not less than 10 years and not more than thirty years" if he or she is convicted. The minimum sentence is ten years in prison and the maximum punishment is thirty years in prison, which will discourage future perpetrators and guarantee that justice is served.

This demonstrates that marital rape is considered to be a less serious crime when compared to other types of rape, such as gang rape, and raises the question of whether the fear of five years in prison would be an effective deterrent in this situation.

For the most part, because the element of permission is deemed unimportant in S.375A, Malaysian women do not have any legal protection against their husbands' unconsented sexual solicitation of them. Because of this, it is impossible to assert that S.375A provides reasonable protection for married women.

When it comes to marriage in Indonesia, men's presumption of sexual entitlement inside the union both reflects and promotes cultural conceptions of



gender inequality, which leads to popular interpretations of Islamic law, as well as local culture and custom.

Indonesian law does not yet criminalise either marital rape or domestic violence at the time of this writing. It is important to note that under current legal interpretation, rape is considered a "ethical crime" rather than a crime against an individual, indicating that the rights of individual women are regarded as secondary to moral and ethical concerns about society behaviour.

Some ethnic groups in Indonesia have attitudes about women's sexuality that are based on concepts of gender, shame, and family honour, rather than ideas of women's rights and individuality. Non-marital and marital rape are prevalent in some of these communities. Furthermore, the authors argue that if legislation were to place a greater emphasis on women's individual human rights by defining rape as a crime against a person, this would call into question husbands' sexual entitlement to their wives, and the idea—as well as the punishment—of marital rape would become a legally viable option.

The only way to achieve the criminalization of marital rape in Indonesia is to approach the issue from the perspective of individual rights. Individual rights approaches are valuable and useful for a variety of reasons, not the least of which is their ability to inspire legislative reform. Even if individual rights arguments fail to achieve the goal of criminalising marital rape in the foreseeable future, the issues that the approach will publicise, the principles that it will begin to establish, and the attendant social and other legal consequences will be just as significant as criminalization itself, according to the authors of the paper.

The prevalence of marital rape and domestic violence in Indonesia is currently unknown, and there are no trustworthy statistics available. It is difficult to acquire accurate data on rape and violence against women in Indonesia, according to the country's State Ministry for the Role of Women, in part because victims are unwilling to disclose events. Despite the fact that it is underreported, marital rape has an undeniable negative impact on the lives of women who are subjected to it. No matter how damaging it is to Indonesian women's lives, marital rape is not considered a crime under the country's Criminal Code.

Rape, according to the Code, is defined as an act of forced penetration that occurs outside of marriage, between a man and a woman who is not the man's spouse. Article 285 of the Constitution provides that "those who... force a woman to have sexual relations outside of marriage are subject to the danger of jail... since they have engaged in rape." 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 also effectively made it a legal impossibility under the current legal framework in the country.

However, if rape occurs within a marriage, the state defers to cultural ideas of male supremacy, disregarding the possibility that women have an individual right to bodily integrity, regardless of the setting. The Code criminalises statutory rape as well as rape outside of marriage. In addition, the absence of an individual rights framework in Indonesia's criminal legislation explains why the state has been unable to criminalise domestic violence. An idea that women have rights to physical

integrity as individuals leaves the state with no justification for interfering with husbands' freedom to do whatever they want with their wives.

Women's sexuality inside marriage is governed solely by cultural norms; hence, when a husband behaves aggressively toward his wife, she has no stated individual right to be free from violence and must comply with her gender-determined obligation to submit to her husband. Even when a spouse rapes the other, cultural preconceptions about marriage hold true, such as believing it is always harmonious, that husbands and wives are of one mind, and that reconciliation is always possible.

The assumption that there can be no harm done by a marriage because the husband and wife are always in agreement leads to the conclusion that legal intervention in the form of complete criminalization of marital rape would be an unwelcome introduction of antagonism into the marriage and should be avoided at all costs. Marriage rape exemptions are still in effect in many states, largely due to the fact that abolishing them would necessitate a societal acceptance of the fact that marriage can be a source of danger and violence for women, as well as the fact that women have rights as individuals against their husbands.

In addition, by raising awareness of marital abuse in general, the individual rights framework could aid in the passage of legislation against domestic violence. Whether or whether the domestic violence legislation now under discussion becomes law, the individual rights approach will aid in raising community understanding of women's rights, as legislation will be of no use unless and until women are willing to take use of its provisions.

To overcome social stigma and pursue legal remedies, women will need to be made aware of their rights, regardless of whether or not a domestic violence or marital rape statute is enacted in their jurisdiction.

Although the state and legislators themselves have not been able to take the crucial step of recognising marital rape as a violation of women's individual rights, the international community has done so. Last but not least, marriage is a life-long commitment that should be filled with happiness and harmony as much as possible. Communication and respect are, without a doubt, essential for a happy marriage. Not every abusive marriage should be ended by divorce, according to experts. Having a partner who has a greater libido or who is prone to abnormal habits and unusual sexual demand, the husband and wife should recognise the primary problem and seek professional assistance if the difficulties persist and negatively impact the family's harmony.

## **CHAPTER IV**

### **CLOSING**

#### **A. Conclusion**

Gender equality is a right that every human deserves. However, the discrimination still holding women to express their voice in many aspects even though they have equal rights to get good access of education, healthcare and safe wellbeing. There is no exception regardless of their marital status. The act of molesting one's partner without his or her consent is known as marital rape. Lack of consent is essential, and does not have to be accompanied by a physical attack. Some people consider marital rape as a kind of domestic violence and sexual punishment. Rape of marriage is still not punishable in many countries around the world, with the exception of Malaysia and Indonesia.

Malaysian Penal Code Section 375 describes the relationship except the relationship between a man and his own wife, which is not robbed if the marriage is legal under any written law that was at that time or recognized as legal in Malaysia, penetration is sufficient to prove. Additionally, in S.375, any man in legal marriage causes fear or injury to his wife or anyone else to have sex with her will be imprisoned for five years. Regrettably, S.375A does not mention consent, which means that consent plays no role in delegitimizing intercourse. While, in Indonesia, marital rape is not criminalize under Indonesia Criminal Code and it is only stated in Domestic Violence Protection Act. However, the cases are not taken seriously when the punishment is less strict instead of rape that occurs outside marriage.

Malaysia and Indonesia are known as the country consisting of traditions and customs to be upheld. Due to the strong socially imposed masculinity and femininity character stereotypes, these unequal power relationships between men and women become even more pronounced. Thus, patriarchy teaching has been nurtured in Malaysian and Indonesian households due to cultural and customary practices and a misinterpretation of religious teaching. Additionally, the implementation is related to the public sentiment which they are believed that marital rape is almost impossible to be discussed. This resulted in women is not aware that marital rape is a form of domestic violence.

Wives are believed to preserve the honour of the family; meanwhile, as some wives in these regions rely on their husbands as sole breadwinners, they believe that they have to endure and solely obey their husbands. Forced sex within marriage occasionally occurs without the consent of wives, which the husbands believe that their wives wholly own by them and acquire no consent to perform sexual acts on their wives. Conjugal right indeed has a boundary and the right cannot be abused and claimed as husband and wife obligation towards each other.

As Islam is the religion of *rahmatan lil alamin*, Islam guides all aspects of life, including sexual etiquette which both husband and wife expect mutual satisfaction in sexual intercourse. Hence, wives also have the right to refuse intercourse under certain conditions. The condition mentioned is not necessarily for a husband to accuse his wife of *nushuz*. Islam also guides husbands in dealing with disobedient wives. *Nushuz* is not a condition for a husband to punish his wife

harshly. This is indeed against the teaching of Islam, which highly encourage entertaining the wives with *musyawarah bil maaruf*.

A wife who is abused sexually will experience psychological disorders and inflict more significant harm. This can jeopardize the well-being of the family. In many cases recorded in criminal precedent cases, the wives ended up committing severe crimes such as murder due to being sexually tortured in marriage. Indeed, psychological distress is one factor that should be deliberate to make marital rape a crime.

There is no specific law enforcement in Malaysia and Indonesia to prosecute the perpetrator of marital rape, and as a result of the lack of a specific legal allocation, victims may not receive the protection they deserve. Prosecuting the husband for marital rape while remaining the legal marriage is nearly impossible. Thus, women continue to be hesitant to speak up due to social pressure.

## **B. Suggestion**

After conducting this study, I propose the following :

1. While it is not easy to change one's way of thinking, authorities can organize programmes that raise community awareness in Malaysia and Indonesia on how domestic violence that occurs in marriage must be taken seriously as it comes with severe consequences.
2. Committee establishment in Malaysia and Indonesia that consisted of experts in law, medical, religion to discuss and propose the amendments of this acts

; reviewing the punishment and condition to fit in both country socio-culture circumstances.



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