
**COMPARATIVE STUDY OF MARITAL RAPE AS A REASON FOR DIVORCE IN INDONESIA, MALAYSIA
AND SINGAPORE**

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ABSTRACT

Marital is an act of violence or coercion by a husband/wife against a partner who is obliged to engage in sexual activity in marriage regardless of the partner's status sexual intercourse that is carried out vaginally, orally or anally by force, given threats or is carried out while in an unconscious state. The research method used is normative legal research.

In Indonesia, marital rape itself is included in the realm of domestic violence which is regulated in Law No. 23 of 2004, while in Malaysia and Singapore there are no specific laws governing marital rape. But a wife who is in the process of divorce can ask for protection.

Keywords: Sexual Violence, Marital Rape, Rape.

INTRODUCTION

A family consists of two or more people connected by solidarity and emotional ties, who consider themselves part of the family (Zakaria, 2017). They are not bound by ties of blood and law, live under one roof, are interdependent and emotionally close, and serve to preserve a culture that encourages physical, mental, emotional and social development to see themselves as a family. In principle, all people, both men and women, have sexual instincts, just in different degrees and intensity.

Domestic violence is a minor offense or crime suffered by people and a form of discrimination. Domestic violence (KDRT) is any crime that is often committed against women which causes physical, psychological, sexual and emotional suffering. Neglect also includes threats, coercion and unlawful exploitation in the home. The prohibition on domestic violence is regulated in Article Chapter III of the PKDRT Law.

Apart from Indonesia, Malaysia also regulates the prohibition of domestic violence. Malaysia regulates domestic sexual violence through domestic violence against women (Domestic Violence in Malaysia is regulated by the 1994 Domestic Violence Law, namely the Domestic Violence Law No. 521 of 1994). The 1994 Domestic Violence Law must be read in conjunction with the Criminal Code (UU 574) or other laws that regulate domestic violence.

Marital rape is an act of violence or coercion by a husband/wife against a partner who is obliged to engage in sexual activity within the marriage regardless of the partner's status.

Under Singapore law, rape occurs when a man inserts his penis into a woman's vagina without her consent. S375(1), Criminal Code Penetration of another orifice is not rape. When a man enters a woman's mouth or anus with his penis without her consent, he commits a crime known as unlawful sexual penetration. S376(1).

The author is interested in three laws from these three countries, namely regulations and punishments for the crime of marital rape. The author wants to look at the similarities and differences in each of these countries' regulations to find out the weaknesses and strengths of marriage. There are three structures, so the author examines and examines the problem of the title "COMPARATION STUDY OF MARITAL RAPE AS A REASON FOR DIVORCE IN INDONESIA, MALAYSIA AND SINGAPORE".

RESEARCH METHODS

This research includes a comparative approach. Normative legal research is used as a research method. Normative legal research is research that is the subject of principles, norms, statutory regulations, court decisions, agreements and doctrine. The data collected in this research is a secondary legal data source, data from journals and articles. To obtain more accurate and relevant information, the data collection technique is carried out by literature review using secondary legal materials, namely by looking for materials (references) that are related and related to the research. Regarding data collection techniques, it is arranged in norms, articles and journals related to title processing. The author uses qualitative analysis when analyzing information from various sources.

RESULTS AND DISCUSSION

Marital Rape Concept in Indonesia, Malaysia and Singapore

The Concept of Marital Rape in Indonesia

Marital Rape is the act of rape in the household, where there is a marital bond. Rape in marriage is considered a form of domestic violence. (Merlia M, 2007)

The Draft Criminal Code (RUU KUHP) regulates articles regarding rape or forced rape by a husband against his wife or vice versa, or rape within marriage. This rule is stated in Article 479(2)(a) of the Criminal Code.

This article explains that perpetrators of domestic violence can be sentenced to a maximum of 12 years in prison. Namely, legal husband/wife," according to Article 479(2)(a) of the Criminal Code.

According to the National Commission on Violence Against Women, many people do not take domestic violence seriously. In fact, some believe that domestic violence does not exist. The concept of marital rape is difficult to explain. Because even if one of the parties says they agree, it could be said to be under duress. Therefore, rape can only be recognized if one of the parties experiences suffering.

Types of marital rape

1. Forced relationship
2. sex for manipulation
3. Sexting without realizing it
4. Sex because it's threatened

Marital Rape Concept in Malaysia

The law regarding marital rape is one of the more complex issues, as it has been debated for some time with no way to reach a proper solution. Just scratching the surface of the argument, the two main issues are:

1. Malaysian law does not criminalize marital rape. This means that if a husband has sex without his wife's consent, then it is not rape.
2. The law only recognizes men as perpetrators and women as victims, not vice versa

The concept of marital rape is unknown. However, if a man "causes pain or fear of death or injury to his wife or another person with whom he has sexual relations" he can be sentenced to a maximum prison sentence of five years under Article 375A of the Criminal Code.

In 2014 a Universiti Sains Malaysia study estimated that 9% of ever-partnered women in Peninsular Malaysia had experienced domestic violence in their lifetime, while 11% of these approximately 100,000 women, had been raped by their husbands.

Marital Rape Concept in Singapore

Prior to 2020, spousal rape was specifically excluded from rape laws except in particularly egregious circumstances (Section 375 of the Criminal Code), but a husband who forced his wife to have sex could be

prosecuted for other offences, such as assault. Marital rape is a criminal offense when a couple is separated, there is a preliminary decree of divorce that is not legally binding, or there is a written separation agreement and the court has issued an order protecting the husband. This exception was lifted on January 1, 2020, and all spousal rape was criminalized.

Currently, under Singapore law, women are not protected from rape by their husbands under Article 375(4) of the Criminal Code, for example:

1. Separation of husband and wife
 - under a temporary divorce order
 - In accordance with the Judicial Segregation Law or Decree
 - Under a written separation agreement
 - The divorce or judicial separation process has not been terminated or completed.
2. A court order prohibits the husband from having sex with his wife.
3. Habeas corpus or expedited order applies to the husband for the benefit of his wife, or the process of habeas corpus or expedited order has been initiated and has not been terminated or terminated.

Currently, according to Article 375 of the Criminal Code, rape is an act of inserting the penis into the vagina without asking the woman's consent.

Marital Rape is a Reason for Divorce in Indonesia, Malaysia and Singapore

Marital Rape is a Reason for Divorce in Indonesia

The principle of marriage law is that filing for divorce cannot be easy, it must be complicated. -several reasons. This provision was implemented to reduce the divorce rate in Indonesia. Article 19 PP no. 19 explains the grounds on which divorce is permitted. Implementation of Article 116 Compendium of Marriage Law and Islamic Law (KHI) No. 7 of 1975.

In Indonesia, divorce is regulated by Marriage Law no. 1 of 1974 as amended by Law no. 16 of 2019 concerning Amendments to Marriage Law no. 1 of 1974 and Presidential Decree no. 1 of 1991 concerning Strengthening Islamic Legal Provisions No. 154 of 1991 Minister of Religion concerning the Implementation of Presidential Instruction No.1 of 1991.

The rules regarding permissible grounds for divorce are restrictive. If a couple wants to divorce, the reasons must be in accordance with the regulations in force in Indonesia. The reasons a divorce can be filed in court are: A spouse, whether the husband or wife is a condensor, gambler, alcoholic, adulterer, etc., leaves the spouse permanently for two years without the consent of the spouse. his allies and for no good reason or for anything other than himself,

The difference between spousal rape and domestic violence lies in two indicators, namely "coercion" and "sexual intercourse". In general, coercion itself means using threats, intimidation and pressure of power to force another party to do what is asked of them.

Marital Rape is a Reason for Divorce in Malaysia

Based on this country's legal arrangements for sexual offences, the position in Sharia, the reality of criminal practices, as well as the norms and culture of the Malaysian people marital rape is not recognized here. There is no such thing as rape after marriage in the context of legally married couples in Malaysia.

Wives are given the privilege to divorce by means of *khulu'* (redemption), *ta'liq*, and *fasakh*. These rights require sanction from the Court as stated in Islamic Family Law in Malaysia by Najibah Mohd Zin, et al. (2016). A brief definition of the above three types of divorce by a wife is outlined below:

- *Khulu'*: Divorce pronounced by the husband by way of redemption after the amount of the talaq redemption payment (the wife compensates for her release) is made { See s 49 of the Islamic Family Law (Federal Territories) Act 1984 (hereinafter referred to as IFLA 1984) and Surah Al-Baqarah: 229 }.
- *Ta'liq*: Divorce due to violation of a provision by the husband stated in the marriage contract, as required by the provisions. Such violations can be the basis for the wife to file a lawsuit with the Syari'ah Court and the Court will grant the divorce if the violation is proven satisfactorily { See page 175 of Islamic Family Law in Malaysia by Najibah Mohd Zin, et al. (2016) }.

- *Fasakh*: Dissolution of a marriage by Court order for certain acceptable reasons recognized under Islamic law { See page 193 of Islamic Family Law in Malaysia by Najibah Mohd Zin, et al. (2016) and s 52 IFLA 1984 }.

Marital rape is not recognized in Malaysia because we do not use terms suggested by liberal requirements and international legal instruments. This question was originally raised by liberal feminists who could not accept that women must always be "ready" for their husbands. They object to the notion that wives must obey their husband's commands or commands completely, even though religion permits it. We must understand the legal interpretation of the word rape, which can only occur outside of marriage.

Even so, marital rape itself is a reason for divorce in this country if the victim can prove that rape exists in the family and that divorce cannot maintain the marriage because the marriage is always threatened.

Marital Rape is a Reason for Divorce in Singapore

Although in Singapore married people have marital rights to each other, these rights must be exercised in a reasonable manner. Acts of harassment are considered an affront to civility.

According to Article 375 Paragraph 4 of the Criminal Code, a husband can be punished for raping his wife if penetration occurs without her consent. It doesn't matter whether the couple lives together or is separated, or whether they are still married. Article 3 (12) states that a divorce can only be registered after there is agreement from both parties. However, under Article 4(12), the prohibition does not apply to divorces ordered by Sharia courts. This means that any divorce where the parties cannot reach an agreement must be referred to the Sharia Court. This is stated in Article 21. This is in accordance with Article 35 of Islamic Judicial Administration.

In this country, Marital Rape can be used as a reason or cause for divorce if the damage to a marriage can no longer be repaired.

CONCLUSION

Based on the results of the discussion about marital rape as a reason for divorce in Indonesia, marital rape itself falls into the realm of domestic violence which is regulated in Law No. 23 of 2004, while Malaysia and Singapore do not have specific laws regarding marital rape. However, a wife in the process of divorce can ask for protection. She can also seek a court order to prevent her husband from making unwanted sexual advances towards her. It is difficult for victims of spousal rape to obtain justice and legal protection due to the absence of a strong legal framework and domestic paradigm. Issues are ignored because they are considered a private matter between husband and wife.

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