COMPARATIVE ANALYSIS TOWARDS LEGAL SYSTEM IN INDONESIA
AND MALAYSIA RELATED TO RAPE CRIME

By:

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PANEL EXAMINERS APPROVAL SHEET
THESIS ADVISER RECOMMENDATION LETTER

This Thesis entitled "Comparative Analysis Towards Legal System In Indonesia and Malaysia Related to Rape Crime." prepared and submitted by Muhammad Rezeqi in partial fulfillment of the requirements for the degree Bachelor of Law Faculty of Humanities President University has been reviewed and found to have satisfied the requirement for a Thesis fit to be examined. I therefore recommend this Thesis for Oral Defense.

Cikarang, May 22nd, 2018

Recommended by,

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DECLARATION OF ORIGINALITY

I declare that this Thesis, entitled "Comparative Analysis Towards Legal System In Indonesia and Malaysia Related to Rape Crime.", to the best of my knowledge and belief, an original piece of work that has not been submitted, either in a whole or in a part, to another university to obtain a degree.

Cikarang May 22nd, 2018

Maruta Glendio Benlas
ABSTRACT

Victim factor is very important to be able to settle the case of criminal act of rape, it is very necessary courage victim to report the happened happened to the police, because in general the victim is threatened by the perpetrator, it makes victim fear and trauma. Because it is very necessary protection for victims so that cases of rape that she experiencing can be resolved legally by law enforcement agencies in force. And how, in fact, can existing law ensure the victim to seek justice, in the fact that law enforcement officials are running existing laws. Is the law applied in Indonesia effective or not and what if compared to the criminal law in Malaysia.

This research is empirical normative research. Normative legal research is legal research that examines written law from aspects of theory, history, philosophy, comparison, structure and composition, scope and material, general explanation of article by section, formality and strength binding a law but not binding to the applied aspect or its implementation.

The results of field studies that have been conducted by the National Commission on Children and the Legal Aid Institute stated that the crime of rape and crime of rape against children is still high in Indonesia based on their observations. In addition, law enforcement officers are still considered to be gender biased and the community's mindset that makes the act of rape is a disgrace of the victim becomes a
special obstacle to the disclosure of criminal cases of rape. The punishment of the perpetrators of rape in Indonesia is still high when compared to Malaysia.

Keywords: Rape Crime, Legal Protection Rape Victim, Criminal Code, Malaysian Penal Code.
ABSTRAK

Faktor korban sangat penting untuk dapat menyelesaikan kasus tindak pidana perkosaan, sangat perlu keberanian korban melaporkan kejadian yang terjadi pada polisi, karena secara umum korban diancam oleh pelaku, itu membuat korban takut dan trauma. Karena itu perlindungan yang sangat penting bagi korban sehingga kasus perkosaan yang dia hadapi dapat diselesaikan secara hukum oleh aparat penegak hukum yang berlaku. Dan bagaimana, pada kenyataannya, dapat ada hukum korban untuk mencari keadilan, pada kenyataannya bahwa petugas penegak hukum menjalankan undang-undang disana. Apakah hukum yang diterapkan di Indonesia efektif atau tidak dan bagaimana jika dibandingkan dengan hukum pidana di Malaysia.

Penelitian ini merupakan penelitian normatif empiris. Penelitian hukum normatif adalah penelitian hukum yang meneliti hukum sejarah, filsafat, perbandingan, struktur dan komposisi, ruang lingkup dan material, penjelasan umum pasal demi pasal, formalitas dan kekuatan mengikat suatu hukum tetapi tidak mengikat aspek yang diterapkan atau implementasinya.

Hasil dari bidang studi telah dilakukan oleh Komisi Nasional untuk Anak-anak dan Lembaga Bantuan Hukum yang menyatakan bahwa kejahatan perkosaan dan kejahatan perkosaan terhadap anak-anak masih tinggi di Indonesia berdasarkan pengamatan mereka. Selain itu, aparat penegak hukum masih dianggap sebagai
perempuan korban, hambatan khusus untuk pengungkapan kasus-kasus kriminal perkosaan. Hukuman terhadap para pelaku perkosaan di Indonesia masih tinggi jika dibandingkan dengan Malaysia.

Kata kunci: Kejahatan Perkosaan, Perlindungan Hukum Korban Perkosaan, Kitab Undang-undang Hukum Pidana, Kode Penal Malaysia.
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CHAPTER I

INTRODUCTION

1.1 BACKGROUND

Crime Rape is still one of the problems in Indonesia. Criminal Rape does not look at the sex of both men and women, regardless of age, appearance, and social groups rather than rape victims. In Indonesia most of the victims of rape are women based on online news portals such as articles published Kompas.com with the title "Dicekoki Miras, junior high school students in Bogor was raped by five teenagers.\footnote{Ramdhan Triyadi Bempah, “Dicekoki Miras Siswi SMP di Bogor Diperkosa Bergiliran Oleh 5 Remaja”, accessed from \url{http://regional.kompas.com/read/2017/12/29/11154531/dicekoki-miras-siswi-smp-di-bogor-diperkosa-bergiliran-oleh-5-remaja} on March 15\textsuperscript{th} 2018.} Then a similar article published by Liputan6.com with Title "Dread 2 Girls Rape Four Men Rotating in Pekanbaru".\footnote{M Syukur, “Derita 2 Gadis Diperkosa Empat Pria Bergiliran di Pekanbaru”, accessed from \url{http://regional.liputan6.com/read/3125605/derita-2-gadis-diperkosa-empat-pria-bergiliran-dipekanbaru} on March 15\textsuperscript{th} 2018.}

Rape is included in the classification of the type of criminal acts of morality in which it is regulated in the Criminal Code. In the Code of Criminal Law itself the crime of decency is divided into 2, namely:

a. The criminal act of rape for intercourse is provided for in Articles 285, 286, 287, 288 of the Criminal Code.

c. Criminal Rape against minor regulated on article 81 and article 82 on Law number 35 Year 2014 about Child Protection.

d. With the inclusion of rape in the Criminal Code, this action is a criminal offense that can be subject to criminal sanctions. The examples of cases above rape victims are mostly women where the act of rape not only damages the physical but also the mental of the victims of the crime of rape.

The number of incidents of rape crime in Indonesia during 2014-2016 fluctuated. shows in 2014 recorded as many as 1715 cases, increased to 1739 cases in 2015 and then declined in 2016 to 1594 cases.³

Malaysia also regulates Criminal Acts in the Penal Code in the article:

**Article 375 Malaysian Penal Code:**

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A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the following descriptions:

(a) against her will;
(b) without her consent;
(c) with her consent, when her consent has been obtained by putting her in fear of death or hurt to herself or any other person, or obtained under a misconception of fact and the man knows or has reason to believe that the consent was given in consequence of such misconception;
(d) with her consent, when the man knows that he is not her husband, and her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married or to whom she would consent;
(e) ; with her consent, when, at the time of giving such consent, she is unable to understand the nature and consequences of that to which she gives consent;
(f) with her consent, when the consent is obtained by using his position of authority over her or because of professional relationship or other relationship of trust in relation to her;
(g) with or without her consent, when she is under sixteen years of age.

Article 375 A Malaysian Penal Code:
Any man who during the subsistence of a valid marriage causes hurt or fear of
death or hurt to his wife or any other person in order to have sexual intercourse with
his wife shall be punished with imprisonment for a term which may extend to five
years

**Article 375 B Malaysian Penal Code:**

Whoever commits gang rape shall be punished with imprisonment for a term of
not less than ten years and not more than thirty years.

**Article 376 Malaysian Penal Code:**

(1) Subject to subsections (2), (3) and (4), whoever commits rape shall be punished with
* imprisonment for a term which may extend to twenty years, and shall also be
punished with whipping.

(2) Whoever commits rape on a woman under any of the following circumstances:

(a) at the time of, or immediately before or after the commission of the offence,
causes hurt to her or to any other person;

(b) at the time of, or immediately before or after the commission of the offence,
puts her in fear of death or hurt to herself or any other person;

(c) the offence was committed in the company of or in the presence of any other
person;

(d) without her consent, when she is under sixteen years of age;

(e) with or without her consent, when she is under twelve years of age;
(f) with her consent, when the consent is obtained by using his position of
authority over her or because of professional relationship or other
relationship of trust in relation to her;

(g) at the time of the offence the woman was pregnant;

(h) when by reason or on occasion of the rape, the woman becomes insane;

(i) when he knows that he is afflicted with the Human Immuno-Deficiency
Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other
sexually transmissible disease and the virus or disease is or may be
transmitted to the woman;

(j) when by reason or on occasion of the rape, the woman commits suicide; or

(k) when he knew of the mental disability, emotional disorder or physical
handicap of the woman at the time of the commission of the crime, shall be
punished with imprisonment for a term of not less than * ten years and not
more than thirty years and shall also be punished with whipping.

(3) Whoever commits rape on a woman whose relationship to him is such that he is not
permitted under the law, religion, custom or usage, to marry her, shall be punished
with imprisonment for a term of not less than eight years and not more than thirty
years, and shall also be punished with whipping of not less than ten strokes.

(4) Whoever whilst committing or attempting to commit rape causes the death of the
woman on whom the rape is committed or attempted shall be punished with death or
imprisonment for a term of not less than fifteen years and not more than thirty years, and shall also be punished with whipping of not less than ten strokes.

Based on the background that has been described by the author, the authors are interested in how the legal protection for rape victims in Indonesia, and how the effectiveness of the law for rape victims in Indonesia. So the author will do research with the title "Comparative Analysis Towards Legal System in Indonesia an Malaysia To Rape Crime”

1.2 Research Question

Based on the description of the Background that has been the authors describe, the issues to be discussed in this study are:

1. How is legal protection and the effectiveness of legal protection for rape victims in Indonesia?

2. Comparative Study of legal protection regarding rape victims based on Indonesia Law and Malaysia Law

1.3 Objectives of Research

The purpose of this Case Study Research is to:

1. To know the legal protection and the effectiveness of legal protection for rape victims in Indonesia
2. To know the of legal protection regarding rape victims based on Indonesia Law and Malaysia Law

1.4 Benefit of Research

In writing this Case Study Research the authors hope will later writing this case study can provide benefits that are as follows:

1. Academic Benefits, theoretically the results of this study are expected to provide positive benefits for the development of law science, especially concerning in the field of knowledge will judge consideration in deciding a court decision.

2. Practical benefits, the results of this study are expected to contribute or input to students of law faculty and other faculty students in search for reference writing.

1.5 Research Method

In a research, research method is one important factor that support a research process that is in the form of solving a problem to be studied, where the research method is the main way that aims to achieve the level of accuracy, number, and type to be faced. However, by holding a classification that will be based on experience can be determined the type of research.\(^4\)

Legal research method is a procedure or steps that are considered effective and efficient and generally have been patterned to collect, process, and analyze data in order to answer the problem under study correctly. Therefore the author uses the method of Empirical Normative research because it would be very appropriate for this research. This research is empirical normative research. Normative legal research is legal research that examines written law from aspects of theory, history, philosophy, comparison, structure and composition, scope and material, general explanation of article by section, formality and strength binding a law but not binding to the applied aspect or its implementation. Empirical research is an unwritten positive legal research on the behavior of community members in relationships of society. This method is used because this study also examines how the workings of law in the community that can be said as sociological legal research. This is included in legal research because it is derived from the facts that exist within a society, legal entity or government agency.

The research methods used in this study are as follows:

1. Research Approach

According to the research strategy is a way to collect data into objects, subjects, variables, as well as problems studied for data directed to the goal to be achieved. According Sugiyono, qualitative research method is a research method used to

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7 Ibid., Page 155.
examine the condition of natural objects where researchers are as a key instrument in the process of sampling the data source. The research approach used is a qualitative approach, which is the approach that interprets every phenomenon that occurs and is done by involving various methods that exist.\(^8\)

2. Source of Data

The types of data can be seen from the source, can be distinguished between the data obtained directly from the community and the data obtained from the library materials.\(^9\) As for getting the right data or answers in discussing this thesis, and in accordance with the problem approach used in this study, the type of data used in this research is divided into two, namely:

a. Primary Data

That is information or facts obtained from the first source or through field research by conducting interviews with the National Commission of Children and Legal Aid Institute APIK on legal protection for rape victims in Indonesia and the effectiveness of legal protection for rape victims in Indonesia.

b. Secondary Data

That is data obtained from library materials which among others derived from documents, legislation, internet, reports of previous research, books, literature

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\(^8\) Nana Syaodih Sukmadinata, “*Metode Penelitian Pendidikan*”, (Bandung : Rosdakarya, 2012), Page 56-60.

and other sources related to this research. Secondary data used in this research are:

a. Primary Law Material

Primary legal material is data taken from the original source in the form of laws that have high authority that is binding to the implementation of community life.\textsuperscript{10} Secondary data used in this research are:

1. Indonesia Criminal Code
2. Malaysia Penal Code
3. Law Number 17 Year 2016 concerning the Stipulation of Regulation No. 1 of 2016 on the Second Amendment to Law Number 23 Year 2002 regarding Child Protection Becoming Law;
4. Law Number 31 Year 2014 Concerning Amendment to Law Number 13 Year 2006 Concerning the Protection of Witnesses and Victims

b. Secondary Law Material

Secondary legal material is a legal material that provides information on primary legal materials and obtained indirectly from the source or in other words collected by other parties, in the form of legal journals, official documents, research tangible reports and books of law.\textsuperscript{11}

\textsuperscript{10} Peter Mahmud Marzuki, \textit{“Penelitian Hukum”}, (Jakarta : Kencana Prenada Group, 2005), Page 142.
\textsuperscript{11} \textit{Ibid.}, Page 36.
c. Tarsier Law Material

Tarsier legal materials are legal materials that provide guidance as well as explanation of primary legal materials and secondary legal materials better known by the name of reference law field, such as:

1. Indonesia Dictionary
2. Literatures and research results
3. Mass Media, scholars and legal experts, newspapers, websites, books, and scholarly works.  

3. Data Analysis

The author argues that it is appropriate if in this study using data analysis with qualitative descriptive method. The legal material (data) of the processing result is analyzed by qualitative method of analysis, that is to describe the data in a good quality in the form of sentences arranged regularly, cascade, logical, not overlapping and effective. So as to facilitate the interpretation of data and understanding of the results of the analysis.

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13 Ibid., Page 36.
The data in this study will be described into sentences arranged systematically, so that obtained a clear picture and in the end can be drawn conclusions inductively as a short answer from the problems studied.\textsuperscript{14}

1.6 Systematic Writing

Dalam penulisan penelitian study kasus ini, penulis menggunakan systematic writing seperti di bawah ini yaitu:

1. CHAPTER I : INTRODUCTION

In this chapter is the window of this case study writing research which is the whole introduction of the study case writing. The parts of the introduction include Background, research question, object and benefit of research, research method, and systematic writing.

2. CHAPTER II : FORMS OF THE COMPARATIVE LEGAL PROTECTION OF THE INDONESIAN AND MALAYSIAN LEGAL SYSTEM RELATED FOR CROSSING JUDGMENT

In this chapter is a review of the Library of Criminal Law, Criminal Acts, Rape Crimes, Comparative Law, Crime Rape based on Malaysian Penal Code, Visum Et Repertum, Chlidrean as victim of rape, Hazard Law in Indonesia.

3. CHAPTER III : THE LEGAL PROTECTION OF CRIME RAPE

This chapter is an explanation of the results of a field study with the National Child Commission with APIK Legal Aid Institute.

4. CHAPTER IV : ANALYSIS

Analysis of the results of field studies with the National Commission on Children and Legal Aid Institutions APIK and Comparative between Indonesian and Malaysian legal system about crime rape.

5. CHAPTER V : CONCLUSIONS AND RECOMMENDATION

In this chapter contains the conclusions of the answers to the problems in this case study research and suggestions that can then be useful given by the author for the future.
CHAPTER II

FORMS OF THE COMPARATIVE LEGAL PROTECTION OF
THE INDONESIAN AND MALAYSIAN LEGAL SYSTEM
RELATED FOR CROSSING JUDGMENT

In this second chapter will discuss the elaboration of the Criminal Legal Review, Criminal and Rape Crime from general to specific, *Visum Et Repertum* and the law governing the criminal act of rape. Discusses in depth the keywords of the whole in the writing of this scientific research so that the writing of this research is clear and not confusing.

### 2.1 Theoretical Aspect of Criminal Law

Criminal law is a part of the whole law applicable in a country, which establishes the basics and rules for, determining which acts should not be done, prohibited, with certain threats or penalties for those who violate the prohibition, and determining when and in what matters to those who have violated such prohibitions may be imposed or punished as criminalized.15

The purpose of criminal law is to protect the interests of natural persons or human rights and society. The objective of criminal law in Indonesia must be in accordance with Pancasila philosophy that is capable of bringing just interests to all citizens.

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Thus the criminal law in Indonesia is protecting all the people of Indonesia. The purpose of criminal law is divided into two, namely.\textsuperscript{16}

1. The purpose of criminal law as the law of Sanctions. This objective is conceptual or philosophical in nature which aims at providing basic criminal sanctions. Types of forms and criminal sanctions and also as a parameter in resolving criminal offenses. This objective is usually not written in the criminal law article but can be read from all provisions of criminal law or in general explanation.

2. The purpose in the imposition of criminal sanctions against people who violate the criminal law. This objective is pragmatic with a clear and concrete measure relevant to the problems arising from the violation of criminal law and the person committing a criminal law violation. This goal is the embodiment of the first objective.

Also mentioned some opinions expressed by Sudarto, that the function of criminal law that can be distinguished as follows.\textsuperscript{17}

1. Common functions Criminal law is one part of the law, therefore the function of criminal law is also equal to the function of law in general, that is to organize community life or to organize the order in society

\textsuperscript{16} Teguh Prasetyo, \textit{“Hukum Pidana”}, (Jakarta : Rajawali Press, 2010), Page 7.

\textsuperscript{17} Sudarto, \textit{“Hukum Pidana I”}, (Semarang: Yayasan Sudarto, 1990), Page 9.
2. Special Functions The special function of the criminal law is to protect the legal interests of the act of wanting to rape him (rechtsguterschutz) with sanctions in the form of criminals that are sharper when compared with sanctions contained in other branches of law. In the criminal sanction there is a tragic that the penal law is said to be "slicing its own flesh" or as a "double-edged sword", meaning that the penal law aims to protect the interests of the law (eg life, property, independence, honor), but if there is a violation of the prohibition and his orders actually wear a hurt (hurting) the law's (law's) legal interests. It can be said that the criminal law provides the rules for overcoming evil deeds. In this case, it should be remembered that as a social control tool the function of the criminal law is a subsidiary, meaning that criminal law should only be held (used) if other efforts are inadequate.

2.2 Theoretical Aspect of Criminal Act

Crime is a basic understanding of criminal law. Criminal acts are a juridical sense, as with the term evil or crime. In formal jurisdiction, crime is a form of behavior that violates criminal law.\(^{18}\)

Crime is an act of doing or not doing something that has an element of error as a prohibited act and is threatened with a criminal, in which the criminal imposition of

the perpetrator is for the maintenance of legal order and the guarantee of public interest.  

The term of a crime is a translation of the Dutch language Strafbaarfeit or delict derived from the Latin delictum. While the word "feit" itself in Dutch means "part of reality" or "een gedeelte van werkelijkheid" while "strafbaar" means "punishable," so literally the words "strafbaar feit" can be translated as "part of a reality punishable."  

Here is a definition of criminal law based on some experts:

1. Hazwinkel-Surniga

They have made a general definition of strafafeit as a human behavior that has at some point been rejected in a certain social life and is regarded as a behavior which must be abolished by the penal law by means of means of forceful force in it.  

2. Pompe

According to Pompe, the word strafbaar feit can theoretically be defined as a violation of the norm (which is intentionally or unintentionally committed by a perpetrator, where the punishment of the perpetrator is necessary for the preservation of the rule of law and the assurance of the public interest.  

3. Simon

19 Ibid., Page 16.
20 Ibid., Page 181.
22 Ibid., Page182.
Simon formulates *strafbaar feit* as an act of violating the law deliberately or intentionally committed by a person who can be held accountable for his actions and which by law has been declared a punishable act.23

4. Kami

Kami said that the delik contained acts of right resistance, committed with sin, by the perfect person of his intellect and to whom the act of accountability.24

5. Wirjono Prodjodikoro

Wirjono Prodjokiro proposes the definition of a criminal offense means an act whose perpetrators may be subject to criminal charges.25

6. Moeljanto

Moeljanto gives the meaning of criminal act as an act that is threatened with criminal, whoever violates the prohibition.26

Any criminal offense in the Criminal Code can generally be spelled out into two elements: subjective and objective elements. What is meant by subjective elements are elements inherent in the self-perpetrator or in connection with the self-perpetrator and including into it that is everything that is contained in his heart. While the meaning of the objective element is the elements that have to do with the

23 Ibid., Page 185.
25 *Loc. Cit.*, hlm 42.
26 Ibid., Page 43.
circumstances, namely the circumstances in which the act of the perpetrator must be done.\textsuperscript{27}

The subjective elements of a crime are:

a. Deliberate or unintentional (\textit{culpa / dolus});

b. Purpose or \textit{voornemen} on an experiment or pogging as referred to in Article 53 paragraph (1) of the Criminal Code;

c. Whatever the purpose or oogmerk as there are for example in the crimes of theft, fraud, extortion, forgery and others;

d. Planning in advance or \textit{voorbedachte raad} as for example existed in the crime of murder under Article 340 of the Criminal Code;

e. Feelings of fear or stress, such as among others, are contained in the formulation of a crime under Article 308 of the Criminal Code.

The elements of a criminal offense are:

a. Illegitimacy

b. The quality of the offender;

c. Causality, that is, the relationship between an action as a cause and a reality as a result..\textsuperscript{28}

\textsuperscript{27} Lamintang, “\textit{Dasar-dasar Hukum Pidana Indonesia}”, (Bandung : Sinar Baru, 1984), Page 183.

\textsuperscript{28} \textit{Ibid.}, Page 184.
The classification of Criminal Acts is distinguished by certain criteria and benchmarks, since the laws of criminal law are very diverse. Crime can be classified as follows:

1. Crime Offenses and Criminal Offenses

   The classification of criminal offenses in the Criminal Code consists of crimes (*rechtdelicetd*) and offenses (*wersdelicten*). The Criminal Code is set in the second book and the offense (*rechtdelicted*) is regulated in the third book. Crime is an act contrary to justice that is threatened with criminal severity more than violation. Violations are acts that violate what has been determined by law.  

2. Formal Criminal Acts and Criminal Acts

   Formal Criminal Acts are criminal offenses that emphasize prohibited conduct and are punishable by criminal law. Formal Criminal Offenses do not pay attention to or require any consequence of an act as a condition of settlement of a criminal offense, but on its actions. 

   Criminal Acts Materill is a criminal act that focuses on the forbidden effect is threatened with criminal by law. Materill's criminal acts are not dependent on the deeds done, but are superseded by the consequences.

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29 Teguh Prasetyo, “Hukum Pidana”, (Jakarta : Raja Grafindo Persada, 2010), Page 58.
30 C.S.T. Kansil, Engelin R Palandang and Altje Agustin Musa, “Tindak Pidana dalam Undang-undang Nasional” (Jakarta : Jala Permata Aksara, 2009), Page 4.
32 Ibid., Page 126.
3. Criminal Offenses and Non-Complaints Criminal Act

Criminal Offenses Acts is a criminal offense that can be done criminal prosecution in advance of complaints from Victims who experienced the crime. While Non-Adoption Criminal is a criminal act which is done criminal peningutan not necessarily from victim suffering loss caused by such crime.33


Crime by Crime is a crime that occurs because the perpetrator did want to commit such crime. While Criminal Offenses with Elements of absence are criminal acts that occur due to its negligence.34

5. Simple Criminal Acts and Existing Penalties

Crime is a simple crime or called Eenvoudige Delicten like a criminal act of theft. Whereas the Criminal Acts of which there are pematnya is a crime that occurs because there is a ballast such as criminal acts of theft that occurred at night.35

6. Ongoing Criminal and Ongoing Criminal Proceedings

The ongoing criminal act is a long-standing criminal act that after the deed is done continues is called Voortdurende Delicten. While the ongoing Criminal

33 Loc.cit., Page 126.
Continue is a crime that occurred in a short time only or also called *Aflopende Delicten*.  

7. Criminal Acts and Multiple Criminal

A single is a crime that happens with just one deed. While Multiple Criminal Acts are criminal acts that occur because it is done many times.

8. Criminal Acts Commissionis and Omissionist

Criminal Acts Commissions are criminal acts committed by perpetrators by actively committing violations of prohibitions which have been regulated by law. While Omissionis Criminal Offense is a criminal act that occurs because someone neglects the order or does not do it properly so that the crime happens.

9. Criminal acts of light and Heavy criminal acts

Crime is a criminal act that is criminological that the impact of the loss is mild and the threat of punishment is also light. While Serious Criminal is a serious criminal offense is a criminal act that has a big impact of loss and is threatened with severe penalty.

10. General Crime and Special Crime

General Crime is all criminal acts contained in the Criminal Code as codification of the materillal criminal law (Book I and Book II). While Special Crime is a criminal act that is outside the codification such as Corruption Crime.

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2.3 Theoritical Aspect of Rape Crime

In the Criminal Code the rape crime is set forth in Chapter XIV with the title Crimes against morality contained in Article 285 which states Whosoever with violence or the threat of violence compels a woman to have sex with him outside of marriage, threatened for rape by criminal prison for twelve years.\(^{41}\)

From the article to be said as a crime of rape, among others:

1. A sex relationship prohibited by a woman without her consent.
2. Unauthorized intercourse by a man against a woman committed by force and contrary to the woman's will
3. Sexual deeds committed by a man to a woman who is not his wife or without his consent is done when the woman is frightened.

In an Indonesian dictionary it is explained that rape originates from the word rape which means violent or violent. While rape is defined as a violent process, manner, act of rape, or violation.\(^{42}\)

Judging from the motives of the perpetrators of criminal acts of rape can be classified into several motives, among others:

1. Seductive Rape

Rape that occurs because the perpetrator feels aroused lust, and is subjective. Such rapes are usually familiar to each other.

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\(^{41}\) Indonesia, *Kitab Undang-Undang Hukum Pidana*, Article 285.

2. Sadistic Rape

Rape is done sadistically, the perpetrator gets sexual satisfaction by way of rampant anger against rape victims with violence.

Rape committed as an offensive expression of the perpetrator. Such rape is accompanied by brutal acts of the perpetrator against the victim physically. Relieve his anger to get sexual satisfaction for the perpetrators of rape.

3. Domination Rape

In this act the offender shows his dominance over the victim. Physical violence is not the main purpose of the victim because the perpetrator wants to sexually victimize the victim so that the offender can show that he is in charge of a particular person.

4. Exploitasion Rape

This rape can occur due to the victims' dependence on the perpetrators, both economically and socially. In this case the perpetrator without the use of physical violence but the offender can force its height against the victim.43

Several factors causing the occurrence of criminal rape there are two internal and external factors. Internal factors that lead to the occurrence of criminal rape are family livelihood factors, family economic factors, educational level factors, and religious and / or moral factors. While external factors that resulted in criminal acts of

rape are social environmental factors, factor of technological development, and opportunity factor.  

2.4 Theoritical Aspect of Criminal Rape in Malaysia Based on Malaysian Penal Code

The criminal offense in Malaysia is governed by the Malaysian Penal Code in articles 375 to 376, which states as follows:\n
1. Article 375 Malaysian Penal Code:

A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the following descriptions:

(h) against her will;

(i) without her consent;

(j) with her consent, when her consent has been obtained by putting her in fear of death or hurt to herself or any other person, or obtained under a misconception of fact and the man knows or has reason to believe that the consent was given in consequence of such misconception;

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44 Hakrisnowo, “Hukum Pidana Perpektif Kekerasan Terhadap Wanita”, (Jogjakarta : Jurnal Studi Indonesia, 2000), Page 54.

45 Malaysia, Malaysian Penal Code, Article 375-376.
(k) with her consent, when the man knows that he is not her husband, and her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married or to whom she would consent;

(l) with her consent, when, at the time of giving such consent, she is unable to understand the nature and consequences of that to which she gives consent;

(m) with her consent, when the consent is obtained by using his position of authority over her or because of professional relationship or other relationship of trust in relation to her;

(n) with or without her consent, when she is under sixteen years of age.

2. Article 375 A Malaysian Penal Code:

Any man who during the subsistence of a valid marriage causes hurt or fear of death or hurt to his wife or any other person in order to have sexual intercourse with his wife shall be punished with imprisonment for a term which may extend to five years.

3. Article 375 B Malaysian Penal Code:

Whoever commits gang rape shall be punished with imprisonment for a term of not less than ten years and not more than thirty years.

4. Article 376 Malaysian Penal Code:
(5) Subject to subsections (2), (3) and (4), whoever commits rape shall be punished with * imprisonment for a term which may extend to twenty years, and shall also be punished with whipping.

(6) Whoever commits rape on a woman under any of the following circumstances:

   (l) at the time of, or immediately before or after the commission of the offence, causes hurt to her or to any other person;

   (m) at the time of, or immediately before or after the commission of the offence, puts her in fear of death or hurt to herself or any other person;

   (n) the offence was committed in the company of or in the presence of any other person;

   (o) without her consent, when she is under sixteen years of age;

   (p) with or without her consent, when she is under twelve years of age;

   (q) with her consent, when the consent is obtained by using his position of authority over her or because of professional relationship or other relationship of trust in relation to her;

   (r) at the time of the offence the woman was pregnant;

   (s) when by reason or on occasion of the rape, the woman becomes insane;

   (t) when he knows that he is afflicted with the Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is or may be transmitted to the woman;

   (u) when by reason or on occasion of the rape, the woman commits suicide; or
(v) when he knew of the mental disability, emotional disorder or physical handicap of the woman at the time of the commission of the crime, shall be punished with imprisonment for a term of not less than * ten years and not more than thirty years and shall also be punished with whipping.

(7) Whoever commits rape on a woman whose relationship to him is such that he is not permitted under the law, religion, custom or usage, to marry her, shall be punished with imprisonment for a term of not less than eight years and not more than thirty years, and shall also be punished with whipping of not less than ten strokes.

(8) Whoever whilst committing or attempting to commit rape causes the death of the woman on whom the rape is committed or attempted shall be punished with death or imprisonment for a term of not less than fifteen years and not more than thirty years, and shall also be punished with whipping of not less than ten strokes.

2.5 Theoretical Aspect Of Comparative Law
According to Barda Nawawi Arief in his book quotes some opinions of jurists on terms of comparative law, among others 46:

Rudolf B. Schlesinger says that comparative law is a method of inquiry with the aim of gaining a deeper knowledge of certain legal materials. Comparative law is not a set of rules and legal principles and not a branch of law, but rather a technique for dealing with foreign legal elements of a legal matter.

Winterton argues that comparative law is a method of comparing a legal system and that comparison yields a comparable legal system data.

Gutteridge argues that comparative law is a method of comparison method that can be used in all branches of law. Gutteridge distinguishes between comparative law and foreign law, the first sense of the term to compare two or more legal systems, while the second term is to study foreign law without actually comparing it with other legal systems.

Comparative law is a common method of comparison and comparative research that can be applied in the field of law. These legal experts are: Frederik Pollock, Gutteridge, Rene David, and George Winterton

Lemaire argues, legal as a spare law of science that also uses the method of comparison has the scope and / or content of the rules of law, equality and difference, cause and the basis of society.

Ole Lando points out among other things that comparative law includes "analysis and comparison of the laws". This opinion has shown a tendency to recognize comparisons as branches of jurisprudence.

Another definition of the legal comparative position proposed by Zwiegert and the court is "comparative law of the comparable legal problems of different systems".

Barda Nawawi Arief who thinks comparative law is a science that studied systematically law (criminal) of two or labih legal system by using comparison method.

2.6 Theoretical Aspect of Visum Et Repertum

Here is the definition of Visum Et Repertum based on some experts, Ministerial Decree:

1. R. Atang Ranoemihardja

   Explain that the Medical Science of Justice or Forensic Medicine is a science that uses the knowledge of Medical Science to assist the judiciary both in criminal cases and in other cases (civil).\(^47\)

2. H.M. Soedjatmiko

Visum is derived from Latin, its sole form is "visa". From the meaning of etymology or grammar, the word "visum" or "visa" means the sign of seeing or seeing which means signing of the evidence of all things found, approved and authorized, while "Repertum" means to report what it means obtained from the doctor's examination of the victim. Etymologically the visum et repertum is what is seen and found.  

3. Waluyadi  

Forms of medical expertise of the judiciary may be granted in the event of a crime (at the scene of the case, the examination of the wounded or deceased) and the examination of the evidence, which will be explained and given the result in writing in the form of a letter known as visum et repertum.  

4. Decree of the Minister of Justice Number M04 / UM / 01.06 Year 1983  

Article 10 of the Decree of the Minister of Justice states that the results of judicial medical examination are referred to as Visum et Repertum. The opinion of a doctor who poured in a Visum et Repertum is needed by a judge in making a decision in a trial. This remembers, a judge as a case breaker in a trial, is not equipped with the sciences related to forensic medicine.  

50 Decree of Minister of Justice No. M04/UM/01.06 Year 1986.
Based on the opinion of H.M. Soedjatmiko, as a written statement containing the results of an expert examination of the evidence in a criminal case, the visum et repertum has the following role:

1. As Legitimate Evidence

This is as mentioned in the Criminal Procedure Code Article 184 paragraph (1) jo article 187 letter c.

2. Proof of Suspect Detention

In a case which requires the investigator to arrest the alleged perpetrator of a criminal offense, the investigator must have sufficient evidence to perform such action. One proof is the result of a crime committed by the suspect against the victim. Visum Et Repertum made by the doctor may be used by the investigator in lieu of evidence to complete the suspect's detention order.

3. As a Judge Consideration Material

Although the conclusions section of the Visum Et Repertum is not binding on the judge, however, what is described in the reporting section of a Visum Et Repertum is a material proof of a criminal offense.51

In connection with the above description that the examination of criminal cases is seeking material truth, then every criminal case should be able to be revealed clearly. Visum Et Repertum made by a forensic specialist or other expert physician, may serve as evidence that explains that a crime is actually happening and that the

defendant does it. In relation to that, the criminal investigation is a matter of seeking material sentence, the request of *Visum Et Repertum* to the doctor is a natural thing for the sake of verification and the interest of examination.

2.7 Theoriticl Aspect of Children as a victim of rape

The factors of the child become victims of criminal acts and perpetrators of criminal acts that need to be protected, namely:

1. Children still need parental guidance

Parents are the closest social environment to raise and grow. Parents who teach good will have a positive effect on the development of children, while parents who do not teach good will cause negative effects.

Childhood conditions are still unstable, need to get parental guidance to seek identity, avoid children from negative behavior. The family that can be the cause of the misbehavior, can be an abnormal family (broken home). According to Moelyatno\(^52\), broken home as it has become a common opinion to cause most children to make misbehavior, especially because of divorce or separation of parents who greatly affect the development of the child. Therefore, the role of parents in guiding the child is very important because children still do not know what is good

\(^{52}\) Moelyatno in Tolib Setiady, *Pokok Pokok Hukum Penitensier Indonesia*, (Bandung : Alfabeta, 2010), Page 185.
and bad so that parents need to guide children so that children can grow well and stay away from negative behavior.

2. Children has a weak physique

Essentially children can not protect themselves from actions that cause mental, physical, and social harm in various areas of life and livelihood. Children should be helped by others in protecting themselves, given the circumstances and conditions. One of the principles used in child protection is that child is the main survival of human capital, nation and family. For that his rights must be protected.53

3. Children has not been able to choose what is good and bad.

Integration is one's intelligence. According to Wundt and Eisler is a person's ability to draw and make decisions.54 children are basically insightful, they are easy to become victims of crime and they are easily dragged down by bad invitations to malicious behavior. Therefore families, communities and countries must protect.

4. Children has an immature age

Stephen Hurwitz reveals age is an important factor in the cause of evil.55 If these factors are followed, then the age factor is an important factor in relation to the causes of the incidence of crime. No exception is a crime that inflicts child victims or crimes committed by a child. Because children are the easiest to become victims of crime.

53 Ibid., Page 39.
55 Ibid., Page 37.
Child protection is all efforts undertaken to create conditions so that every child can exercise his / her rights and obligations for the proper development and growth of the child, physically, mentally and socially. Child protection is a manifestation of justice in a society, thus the need for children to be cultivated in various areas of life in the state and society. Arif Gosita argued that legal certainty should be endeavored for the sake of continuity of child protection activities and to prevent misconduct that brings undesirable adverse effects in the implementation of child protection.56

Criminal threats of rape crimes against minors under the Child Protection Act No. 23 of 2002 are stipulated in Article 81 paragraph (2) as follows:

(1) Any person who deliberately violates or threatens violence to force a child to have sexual intercourse with him or with another person shall be punished with a maximum imprisonment of 15 (fifteen) years and a minimum of 3 (three) years and a maximum fine of Rp. 300.000.000, - (three hundred million rupiah) and at least Rp. 60.000.000, - (sixty million rupiah)

(2) The criminal provisions referred to in paragraph (1) shall also apply to any person who deliberately misrepresents, lies a series of lies, or persuades a child to intercourse with him or with another person.

2.8 Theoritical Aspect of Chemical Hazard Punishment in Indonesia

Chemical Hazard punishment in Indonesia is governed by Law Number 17 of the Year 2016 on Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 on the Second Amendment to Law Number 23 Year 2002 on Child Protection which has been ratified into law on November 9 2016. The changes made in Law No. 17/2016 are as follows:

The provisions of Article 81:

1. Any person violating the provisions referred to in Article 76D shall be subject to imprisonment of a maximum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah);

2. The criminal provisions referred to in paragraph (1) shall also apply to anyone who deliberately misrepresents, a series of lies, or persuades the Child to have intercourse with him or with another person;

3. In the case of a criminal offense as referred to in paragraph (1) shall be committed by a parent, guardian, family person, caregiver, educator, education officer, apparatus dealing with child protection, or committed by more than one person jointly, the penalty shall be added by 1/3 (one third) of the criminal penalty as referred to in paragraph (1);
4. In addition to the perpetrator as referred to in paragraph (3), the addition of 1/3 (one third) of the criminal penalty shall also apply to the perpetrator who has been convicted of a crime as referred to in Article 76D;

5. In the case of criminal offenses as referred to in Article 76D, the victims of more than 1 (one) person result in severe injury, mental illness, infectious disease, disruption or loss of reproductive function, and / or death, perpetrators sentenced to death, lifetime, or imprisonment of at least 10 (ten) years and maximum of 20 (twenty) years;

6. (3), paragraph (4), and paragraph (5), the offender may be subject to additional crime in the form of announcement of the identity of the perpetrator;

7. Against the perpetrator as referred to in paragraph (4) and paragraph (5) may be subject to the act of chemical left and installation of electronic detection equipment;

8. The action referred to in paragraph (7) shall be decided together with the principal penalty by containing the duration of the execution of the action;
9. Additional criminal and excluded acts for Child offender.\textsuperscript{57}

In addition, between Article 81 and Article 82 are inserted 1 (one) article, namely Article 81A which reads as follows:

1. The action referred to in Article 81 paragraph (7) shall be imposed for a maximum period of 2 (two) years and shall be executed after the convicted person undergoes the principal penalty;

2. Implementation of the action referred to in paragraph (1) under the supervision periodically by ministries conducting legal, social, and health affairs of the government;

3. Implementation of chemical hazard accompanied by rehabilitation;

4. Further provisions concerning the procedures for the implementation of actions and rehabilitation shall be regulated by a Government Regulation.\textsuperscript{58}

In addition, the provisions of Article 82 are amended to read as follows:

1. Any person violating the provisions referred to in Article 76E shall be subject to a maximum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah);

\textsuperscript{57} Indonesia, The Enactment of Government Regulation In Lieu of Law No. 1 Year 2016 about The Second Changes of Law No. 23 Year 2002 Concerning On Children Protection Become Legislation, Law No. 17 Year 2016, LN. No. 237 Year 2016, TLN. No. 5946, Article 81.

\textsuperscript{58} Ibid., Article 81 A.
2. In the case of a criminal offense as referred to in paragraph (1) shall be committed by a parent, guardian, family person, caregiver, educator, education officer, apparatus dealing with child protection, or committed by more than one person jointly, the penalty shall be added by 1/3 (one third) of the criminal penalty as referred to in paragraph (1);

3. In addition to the perpetrator as referred to in paragraph (2), the addition of 1/3 (one third) of the criminal penalty shall also apply to the perpetrator who has been convicted of a crime as referred to in Article 76E;

4. In the case of criminal acts as referred to in Article 76E shall result in a victim of more than 1 (one) person, resulting in severe injury, mental illness, infectious disease, disruption or loss of reproductive function, and / or death victim, of the criminal penalty referred to in paragraph (1);

5. In addition to being subjected to a criminal offense as referred to in paragraphs (1) through paragraph (4), the offender may be subject to additional criminal in the form of an identity of the perpetrator;

6. Against the perpetrator as referred to in paragraph (2) through paragraph (4) may be subject to the act of rehabilitation and installation of electronic detection equipment;
7. The action referred to in paragraph (6) shall be decided together with the principal penalty by containing the duration of the execution of the action;

8. Additional criminal is exempted for Child perpetrators.\[59\]

Between Article 82 and Article 83, pursuant to Law 17/2016, one article is inserted, namely Article 82A which reads as follows:

1. The action referred to in Article 82 paragraph (6) shall be executed during and/or after the convict undergoes the principal penalty;

2. The implementation of the action referred to in paragraph (1) shall be under regular supervision by ministries conducting legal, social, and health affairs of the government;

3. Further provisions concerning the procedure for the implementation of the action shall be regulated by a Government Regulation.\[60\]

Law No. 17 of 2016 was enacted due to the issuance of Perpu No. 1 of 2016 which was motivated by the increasing number of sexual violence against children. The government is concerned that the rising number of sexual violence against children will result in an incomplete child growth.

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\[59\] Ibid., Article 82.

\[60\] Ibid., Article 82 A.
CHAPTER III

THE LEGAL PROTECTION OF CRIME RAPE

3.1 Field Study of National Commission for Children

Based on data from the National Commission for Children of the past five years, the percentage of sexual crimes against children has increased to 52 to 58% of cases reported to the National Commission on Children dominated by Sexual Crimes against children.

In 2017 total cases reported to Komnas Anak are 2,726 cases of which 52 to 58% are sexual offenses against children. And the perpetrators of sexual offenses against these children are the closest people from family, relatives, neighbors, known people, to friends of the victims themselves.

The factors that increase the number of child sex offenses from year to year are changes in the behavior of sex offenders, degradation of moral chastity at home, consuming liquor, poverty, and pornography. The National Commission of Children differentiates into two for the perpetrators of sexual crimes against children whose maturity factor is consume liquor and pornography, while for perpetrators who are under age because of pornography itself.

Child sex offenders according to National Children's Commission data often occur in neighborhoods, schools, public spaces, and daycare centers or shelters for abandoned children. Sexual crimes committed by adults or peers of victims of sexual
violence. The perpetrator perpetrates a sexual crime against the child either on his own or performs jointly.

For the settlement of cases of sexual offenses against children, Arist Merdeka Sirait chairman of the National Children's Commission said that the settlement is usually done in kinship or by using the juvenile justice system. If using the juvenile justice system either the perpetrator or the victim will not be exposed to the public or the media. The trial is also conducted in private to ensure the liability of personal information related to the victim or suspect.61

3.2 Field Study of APIK Legal Aid Institute

Based on observations made by the APIK Legal Aid Institute in the mass media cases of criminal acts of rape number is still high. And in the social sphere there is the view that women are second class, women are weak and need more protection than men, and or women are underestimated by men, that view is called the Gender Bias. Even not only in the social environment but occurs in the environment of law enforcers or law enforcement officials.

For the legal substance of the APIK Legal Aid Institute considers that the Criminal Code and the Criminal Procedure Code are no longer adequate or irrelevant for current use. It needs to change to adjust what has happened in the present day. Such a category of criminal acts of rape is very different what is in the Criminal Code and the Criminal Procedure Code with what has happened now.

61 Result from field study at National Commission for Children
The APIK Legal Aid Institute of believes that the Draft Penal Code under consideration in Parliament is good enough. In the draft of the Penal Code has been included several categories of crime of rape or sexual harassment such as rubbing personal belongings of men to each other or the opposite sex, stroking hair and so forth.

Victims who experience rape if they live in the village on average they do not report a rape to the police because community sentiments still see that it is a disgrace and no access to legal information is one factor why rape victims do not report immediately after the incident of rape. As for the victims living in the city of victims of criminal rape report directly to the police for what has been a natural victim.

For the protection of victims of rape crime the Institute of Apik Assistance believes that there are still many rights of victims that are not given because victims in remote areas or traditional societies still do not understand the law, and the treatment of investigators at the level of investigation that still bias gender is still considered a deficiency for legal protection of victims of criminal rape.

The APIK Aid Institute believes that there are still many shortcomings in the law enforcement apparatus of the Police, Attorney and Judge. In the Police there is a shortage at the investigation level where police investigators who provide questions that cornered the victim causing more trauma and no empathy to the victim. This happens in the regions of Indonesia, while for Jakarta it already has the progress of
the accession of the Women and Child Service Unit, where police investigators who deal with rape victims are women.

For the Attorney and Judges, the Legal Aid Institute argued that there is still a gender bias. Especially during the trial where the Judge still gives a question that cornered the victim causing further trauma and the Judge too blame it on the victim. Prosecutors' demands are also considered to be less to prosecute perpetrators of criminal acts of rape. And the verdict of the judge who gave a verdict far below what prosecutors demanded also felt not to give authenticity to the victims of rape.

Human resources of law enforcement officers from the Police, Attorney, and Judge in particular in Indonesia are still lacking. This is because it is not a remote area so it is not monitored by the media so that things happen like law enforcement that does not give wisdom to victims of criminal rape. Except in Jakarta and other big cities Human resources have been progressing because they are given seminars on the procedure of investigating cases of rape crime and so forth.

Finally, the APIK Legal Aid Institute also believes that Indonesia should apply Audio-Visual in the hearing. Audio-Visual is where a victim of a rape crime victim does not need to come to court to give testimony but uses teleconference. So that the victim does not deal directly with the perpetrators of criminal acts of rape that will cause trauma.62

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62 Result from field study with Apik Legal Aid Institute.
CHAPTER IV

ANALYSIS

4.1 Analysis of Legal Protection for Victims of Rape in Indonesia

The percentage rate of Rape Cases from year to year fluctuates and is still high. This is in accordance with the report of Criminal Statistics 2017 data released by the Central Bureau of Statistics of Criminal Rape occurs in over 1,000 cases per year. The number of incidents of crime against rape in Indonesia during 2012-2016 fluctuates. shows in 2014 recorded as many as 1715 cases, decreased to 1739 cases in 2015 then increased in 2016 increased again to 1,594 cases.63

Mr. Fauzi from APIK Legal Aid Institute stated that Victims of rape crime are not only women but men also experience that too. For victims who have knowledge or legal literacy then when he has experienced a crime of rape will immediately report it to the police.64

Whereas Mr. Aris Sirait Chairman of the National Commission of Children declared that when the victims of this rape crime are minors, based on interviews with the National Children's Commission the case is only reported when parents are aware of the behavior of their changed children, such as experiencing pain in one part of his body, fear of strangers and so forth.65

64 Result of Interview with Apik Legal Aid Institute
65 Result of Interview with National Commission for Children
The definition of rape in the Criminal Code is in article 285 which reads "anyone with violence or the threat of violence forcing a woman who is not his wife to have sexual intercourse with her, is threatened for committing a rape with a maximum imprisonment of twelve years."

In article 285 can be drawn conclusions, among others, a mature woman who is still a virgin, Adult women are still virgins and / or who are not virgin again, and women who have married. Criminal Acts of Rape get legal protection as regulated by Law no. 31 Year 2014 About Amendment to Law no. 13 of 2006 on the Protection of Witnesses and Victims jo Government Regulation Number 44 Year 2008 regarding the provision of Compensation, Restitution and Assistance to Witnesses and Victims through the Institute of Sanctions and Victims Protection, namely:

1. Restitution

Restitution under Article 1 Paragraph (5) shall be compensation provided to the victim or his or her family by the perpetrator or a third party, may be the return of property, payment of compensation for loss or suffering, or reimbursement of fees for certain actions.

Under Government Regulation Number 44/2008, this Restitution Request may be filed before or after the offender is found guilty based on a permanent legal court decision. The request for such Restitution shall be filed in writing in sufficient
Indonesian language by the Victim, his Family or his proxy to the Court through the Institute of Sanctions and Victim Protection.\textsuperscript{66}

2. Medical Assistance and Psycho-Social Rehabilitation Assistance

Based on Law Number 13 Year 2006 Concerning the Protection of Sanctions and Victims juncto Unto Law Number 31 Year 2014 About Amendment to Law Number 13 Year 2006 About Witness and Victim Protection, victims of rape crime are also entitled to medical assistance and psycho-social. Such assistance is a service provided to victims and / or witnesses by the Sanctions and Victims Protection Agency.

A request for medical assistance and psycho-social rehabilitation assistance may be presented by the victim, the victim's family, and his / her proxy with a special power of attorney submitted in writing in Indonesian and on stamped paper to the Witness and Victim Protection Agency.

Victim rights contained in Article 5 According to Law Number 13 Year 006 Concerning the Protection of Sanctions and Victims juncto Law Number 31 Year 2014 About Amendment to Law Number 13 Year 2006 Concerning the Protection of Witnesses and Victims is the legal right of the victims provided by law, which states that the victim has the right to:

1. Obtain protection for his or her personal, family, and property safety, and be free from threats relating to testimony that he or she will be, or has given;

2. Participate in the process of selecting and determining security protection and support;

3. Giving information without pressure;

4. Get a translator;

5. Free from trap questions;

6. Obtain information on case developments;

7. Obtain information about court decisions;

8. Knowing in the event that the convicted person is released;

9. Concealed identity;

10. Got a new identity;

11. Getting a temporary residence;

12. Getting a new residence;

13. Obtain replacement of transportation cost as needed;

14. Get advice; and / or receive temporary living expenses to the end of the protection period.
In article 153 paragraph (3) of Law Number 8 Year 1981 regarding Criminal Procedure Law states:

“For the purpose of examination of the presiding judge, the presiding judge opens the session and declares it open to the public except in matters of decency or defendants of children."

So it is clear enough for the trial process of rape crime to be done in private. So that the proof process is not disturbed by the existence of interference from outside, and information from the victim himself can be maintained privacy.

Legal Protection for victims of rape crime as regulated in the above legislation if not run with unqualified human resources will certainly not be able to run well to protect victims of criminal rape.

The current Code of Criminal Law is inadequate for today's use. Due to the broad sense or rape term. The following are provisions concerning penalties for criminal acts of rape based on the Criminal Code:

a. **Article 285 of the Criminal Code**

It reads:

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67 Indonesia, Protection on Victim and Witness Law, Law No. 13 Year 2006, LN No. 64 Year 2000, TLN. No 4635 Jo. Law No. 31 Year 2014 as the changes of Law No. 13 Year 2006 concerning on Protection of Victim and Witness.
Anyone with violence or the threat of violence compels a woman to have sex with her outside of marriage, threatened for rape, with a maximum imprisonment of twelve years.

b. Article 286 of the Criminal Code

It reads:

Anyone who has intercourse with a woman outside of marriage, when it is known that the woman is in a state of unconsciousness or powerless, is threatened with a maximum of nine years imprisonment.

c. Article 287 of the Criminal Code

It reads:

1. Anyone who has intercourse with a woman outside marriage, known or should be presumed to be, is not yet fifteen years of age or if his age is unclear, that it is not yet time to marry, threatened with a maximum of nine years imprisonment.

2. Prosecution is solely based on a complaint, unless the woman is not yet twelve years old or if any of the matters under article 291 and article 294.

d. Article 288 of the Criminal Code

It reads:
1. Anyone in a marriage having intercourse with a woman known to her or duly should be presumed to be concerned that it is not yet time for marriage, if the act resulted in injury, threatened with a maximum imprisonment of four years.

2. If his actions result in severe injuries, a maximum imprisonment of eight years shall be imposed.

3. If it resulted in death, a maximum imprisonment of twelve years shall be imposed.

The articles in the Criminal Code are not sharp in protecting victims of criminal acts of rape. Cases of many criminal acts of rape are not resolved due to inadequate legal regulations. Victims of witnesses of criminal acts of rape are often treated as perpetrators by attaching questions that have been cornered either by the police investigator during the investigation process or by the Judge during the verification process so that the victim often avoids solving his legal case.

All efforts are made by the Investigator to obtain evidence and facts that occurred when the crime of rape occurred. Evidence of criminal act of rape is necessary because rape crime is a criminal act whose proceedings are conducted in private and this crime is only processed if there is a report from the victim or other person who witnessed the crime, so it may be very difficult to find the evidence in revealing cases of rape.

The evidence collected in the investigation process should be able to prove that the act of the perpetrator actually meets the elements of the criminal act of rape. But law enforcement officials find it difficult to find evidence that proves the elements of
criminal acts of rape committed by perpetrators. This criminal act is a crime of morality concerning the dignity and honor of a person and is personal. This criminal act is a crime that is difficult to be revealed. The difficulty experienced is the difficulty of finding evidence and witnesses of this crime. The way used by the Investigator one of them is to ask for help from a specialist by requesting a report in the form of *Visum Et Repertum*.

The meaning or meaning of the criminal act of rape has been widespread as in many cases where rape perpetrators have reasoned to have an intimate relationship based on likes while before doing so threats against victims of criminal acts of rape. This has been incorporated into the Draft Law on Penal Code and there is also another new understanding:

**Article 491**

(1) Sentenced for committing a criminal act of rape, with a maximum imprisonment of 3 (three) years and a maximum of 12 (twelve) years:

a. men who engage in sexual intercourse with women outside of marriage, contrary to the will or otherwise of the woman's consent;

b. men who engage in sexual intercourse with women, with the consent of the woman, but the consent is achieved through threats of murder or injury;

c. a man who has intercourse with a woman, with her consent because she believes that the man is her legal husband;
d. men who have intercourse with women under the age of 18 (eighteen) years, with their consent; or

e. men who engage in sexual intercourse with women, when it is known that the woman is in a state of unconsciousness or powerlessness.

(2) It is also considered a criminal act of rape, if in the circumstances as referred to in paragraph (1):

a. man inserts his genitals into the anus or the mouth of the woman; or

b. men insert an object that is not a part of his body into the vagina or anus women.

(3) If any of the criminal offenses referred to in paragraph (1) and paragraph (2) result in serious injury, the offender shall be punished with imprisonment of a minimum of 3 (three) years and no later than 12 (twelve) years.

In article 491 paragraph (2) of the Draft Law of the Penal Code which reads:

It is also considered a criminal act of rape, if in the circumstances as referred to in paragraph (1):

a. man inserts his genitals into the anus or the mouth of the woman; or

b. men insert an object that is not a part of his body into the vagina or anus women.
The definition of crime of rape in the Draft Law of the Penal Code in article 491 paragraph (2) is clear and applicable for today. Because rape is now not just inserting male genitals into the vagina of women.

The effectiveness of legal protection for victims of rape in Indonesia is still hampered from the Law used less relevant for use in Indonesia today. Where a rape crime already has several new categories that not only screw the victim but insert the genitals into the anus and/or into the mouth of the victim has also been considered a criminal act of rape.

Another obstacle to the legal protection of victims of rape crime is the quality of investigators in the police, prosecutors and judges who still have a gender bias view resulting in not going well with the legal process. At the police level at the time of the investigation, the investigator provides a question that corners the victim such as the question "Do you enjoy the process?" And/or "Is your genitals wet when the process occurs?". Questions like that will not help the victim to reveal the case but cause trauma to the victim.

At the Police also at the time of the investigation, the investigator has no empathy with the victim and tends to corner the victim that all this is a victim's fault. At the time of the investigation the rape victim was questioned by a male investigator by asking sensitive questions. Should at the time of investigation in every investigation of criminal act of rape the investigator requesting testimony of victim witness should be woman if victim of the crime is woman.
At the Attorney-General level during the process of prosecution, the perpetrators of criminal acts of rape are charged with very light criminal penalties that are far from maximum imprisonment. It will also give a sense of injustice to victims of criminal rape who suffered physical and cyclical losses.

At the time of the court proceedings at the first instance, the average Judge presiding over the trial is a male judge who is deemed to have no empathy against the victims of a rape crime. The judge also gave the questioning as to what the Police Investigator filed. Judge's ruling also has not been able to provide a sense of justice for the victims of rape crime, because of the guilty verdict of the perpetrator with a confinement penalty far removed by the General Prosecutor Attorney.

The APIK Legal Aid Institute argues that it is time for Indonesia to implement the Audio-Visual justice system by means of Victims not having to come to Court by using teleconference. So that the victim does not have to deal directly with the perpetrators of criminal rape, the victim will avoid the trauma that will arise if you look directly with the perpetrator.

4.2 Analysis of Comparative Law between Indonesian Criminal Code and Malaysian Penal Code on Rape Crime

Indonesia regulates the crime of rape in the Criminal Code of Chapter XIV in articles 285, 286, 287, and 288 on crimes against deceny. While Malaysia regulates the crime of rape in Malaysian Penal Code section 375, 375 A, 375 B, and 376.

In Article 286, 286, 287, and 288 Criminal Code reads as follows:
e. **Article 285 of the Criminal Code**

It reads:

Anyone with violence or the threat of violence compels a woman to have sex with her outside of marriage, threatened for rape, with a maximum imprisonment of twelve years.

f. **Article 286 of the Criminal Code**

It reads:

Anyone who has intercourse with a woman outside of marriage, when it is known that the woman is in a state of unconsciousness or powerless, is threatened with a maximum of nine years imprisonment.

g. **Article 287 of the Criminal Code**

It reads:

3. Anyone who has intercourse with a woman outside marriage, known or should be presumed to be, is not yet fifteen years of age or if his age is unclear, that it is not yet time to marry, threatened with a maximum of nine years imprisonment.
4. Prosecution is solely based on a complaint, unless the woman is not yet twelve years old or if any of the matters under article 291 and article 294.

h. Article 288 of the Criminal Code

It reads:

4. Anyone in a marriage having intercourse with a woman known to her or duly should be presumed to be concerned that it is not yet time for marriage, if the act resulted in injury, threatened with a maximum imprisonment of four years.

5. If his actions result in severe injuries, a maximum imprisonment of eight years shall be imposed.

6. If it resulted in death, a maximum imprisonment of twelve years shall be imposed.

In Malaysian Penal Code section 375, 375 A, 375 B, and 376 reads as follows:

Article 375 Malaysian Penal Code:

A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the following descriptions:

(o) against her will;

(p) without her consent;
with her consent, when her consent has been obtained by putting her in fear of death or hurt to herself or any other person, or obtained under a misconception of fact and the man knows or has reason to believe that the consent was given in consequence of such misconception;

with her consent, when the man knows that he is not her husband, and her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married or to whom she would consent;

with her consent, when, at the time of giving such consent, she is unable to understand the nature and consequences of that to which she gives consent;

with her consent, when the consent is obtained by using his position of authority over her or because of professional relationship or other relationship of trust in relation to her;

with or without her consent, when she is under sixteen years of age.

**Article 375 A Malaysian Penal Code:**

Any man who during the subsistence of a valid marriage causes hurt or fear of death or hurt to his wife or any other person in order to have sexual intercourse with his wife shall be punished with imprisonment for a term which may extend to five years.

**Article 375 B Malaysian Penal Code:**
Whoever commits gang rape shall be punished with imprisonment for a term of not less than ten years and not more than thirty years.

**Article 376 Malaysian Penal Code:**

(9) Subject to subsections (2), (3) and (4), whoever commits rape shall be punished with * imprisonment for a term which may extend to twenty years, and shall also be punished with whipping.

(10) Whoever commits rape on a woman under any of the following circumstances:

(w) at the time of, or immediately before or after the commission of the offence, causes hurt to her or to any other person;

(x) at the time of, or immediately before or after the commission of the offence, puts her in fear of death or hurt to herself or any other person;

(y) the offence was committed in the company of or in the presence of any other person;

(z) without her consent, when she is under sixteen years of age;

(aa) with or without her consent, when she is under twelve years of age;

(bb) with her consent, when the consent is obtained by using his position of authority over her or because of professional relationship or other relationship of trust in relation to her;

(cc) at the time of the offence the woman was pregnant;
(dd) when by reason or on occasion of the rape, the woman becomes insane;

(ee) when he knows that he is afflicted with the Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is or may be transmitted to the woman;

(ff) when by reason or on occasion of the rape, the woman commits suicide; or

(gg) when he knew of the mental disability, emotional disorder or physical handicap of the woman at the time of the commission of the crime, shall be punished with imprisonment for a term of not less than * ten years and not more than thirty years and shall also be punished with whipping.

(11) Whoever commits rape on a woman whose relationship to him is such that he is not permitted under the law, religion, custom or usage, to marry her, shall be punished with imprisonment for a term of not less than eight years and not more than thirty years, and shall also be punished with whipping of not less than ten strokes.

(12) Whoever whilst committing or attempting to commit rape causes the death of the woman on whom the rape is committed or attempted shall be punished with death or imprisonment for a term of not less than fifteen years and not more than thirty years, and shall also be punished with whipping of not less than ten strokes.
## Table 1

Comparative Rape Crime between Indonesian Criminal Code and Malaysian Penal Code

<table>
<thead>
<tr>
<th>Country</th>
<th>Indonesia</th>
<th>Malaysia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal System</td>
<td>Civil Law</td>
<td>Common Law</td>
</tr>
<tr>
<td>The Definition of Rape</td>
<td>The Criminal Code does not define the meaning of rape directly, but chapters 285, 286, 287, and 288 contain the same element of intercourse outside marriage without the consent of the victim.</td>
<td>Malaysian law narrowly defines rape as penetrating male genitals into female genitals without their consent, and sexual intercourse with or without the consent of a girl under the age of 16 in articles 375, 375A, 375B, and 376.</td>
</tr>
<tr>
<td>Exception</td>
<td>Sexual intercourse with a</td>
<td>In Malaysia, sexual intercourse</td>
</tr>
<tr>
<td>Definition of rape perpetrators</td>
<td>There is no direct definition of rape perpetrators. However, based on Pasl 185, 286, 287, and 288 Criminal Code, the authors define the perpetrators of rape as any man who has sexual intercourse with an unmarried woman who does so with violence and the threat of victimization.</td>
<td>The perpetrator of rape is a man who penetrates his genitalia into the female genitals without his consent and has sex with or without the consent of a girl at the age of 16 (Malaysian Penal Code 375-376)</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Object or victim of rape</td>
<td>In a Criminal Code that can be an object or a victim is an indefinite woman (article 285), a woman unconscious or disabled (article 286), and a woman who is not yet 15 years old or married (article 287 paragraph 1)</td>
<td>In Malaysian Penal Code which may be an object or a victim of rape is a woman who does not have a wife and a woman conduct sexual intercourse without the consent of the victim, a woman under 16 years of age with or without her</td>
</tr>
<tr>
<td>Violent Sexual Penetration</td>
<td>Unregulated or not set in Criminal Code.</td>
<td>It is not rape but is considered a sexual penetration that is illegal. The perpetrator can be sentenced to a maximum of 20 years imprisonment and a fine or a caning sentence.</td>
</tr>
<tr>
<td>---------------------------</td>
<td>------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Consent, a woman under the confession or illness with or without the consent of the victim, wife or children who want to have sex with the perpetrator.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prison sentence maximum 12 years for rape with violence or threat of violence (Article 285 Criminal Code)</td>
<td>A maximum penalty of 9 years for rape with a woman who is not his wife unconscious or in a state of</td>
<td>A maximum prison sentence of 20 years and a fine or a caning for ordinary rape</td>
</tr>
<tr>
<td>Criminalization or Punishment for Rape</td>
<td></td>
<td>Prison sentences of at least 5 years and a maximum of 30 years, and caning for heavy rape.</td>
</tr>
<tr>
<td>Crime Description</td>
<td>Statutory Law Details</td>
<td>Punishment Details</td>
</tr>
<tr>
<td>-------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Impotence (Article 286 Criminal Code)</td>
<td>A maximum of nine years imprisonment for rape with a woman who has not been 15 years old or has not been able to marry (pasal 287 Criminal Code)</td>
<td>Prison sentences of at least 8 years and a maximum of 30 years, and caning at least 10 lashes for incest rape.</td>
</tr>
<tr>
<td>Rape against minors.</td>
<td>Maximum 9 years imprisonment (article 287 Criminal Code).</td>
<td>Sentence of death or imprisonment of 15 years to 30 years, and human whip at least 10 lashes for rape that led to death.</td>
</tr>
<tr>
<td>Rape with Pregnant Women</td>
<td>Unregulated or not set in Criminal Code.</td>
<td>Classified as severe rape, and sentenced to jail 5 to 30 years and whipped. Under the age of dawn under 16 (Article 376 Penal Code).</td>
</tr>
<tr>
<td>Incest rape</td>
<td>Unregulated or not set in Criminal Code.</td>
<td>Classified in the category of serious rape and perpetrators can be sentenced to 5 years to 30 years imprisonment and caned (Article 376 Penal Code)</td>
</tr>
</tbody>
</table>

Incest rape is sentenced to
<table>
<thead>
<tr>
<th>Crime Description</th>
<th>Relevant Law</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape with murder of the victims.</td>
<td>Criminal Code.</td>
<td>Imprisonment of 8 years to 30 years, and whipped at least 10 lashes (Article 376 Criminal Code)</td>
</tr>
</tbody>
</table>

In Indonesia, rapes and murders are organized in different chapters. The perpetrators of rape were sentenced to layered sentences. Rape is set forth in chapters 285, 286, 287, and 288. While the killing is governed in articles 338-350 of the Criminal Code. Perpetrators of rape with murder, as well as attempted rape and murder sentenced to death or imprisonment of 15 years to 30 years, and punishable by at least 10 whips (Article 376 Penal Code).

Based on the above table, it can be seen that Malaysia more clearly in regulating the crime of rape. As for Indonesia, it is still unclear in regulating criminal acts of rape. In terms of punishment for the crime of rape, Malaysia with Indonesia is still more heavily Malaysia in regulating the punishment of criminal acts of rape. And for Malaysia and Indonesia, they still do not regulate crime of rape against man, whereas rape not only happened to woman but man.
Why the author considers Malaysia Penal Code is better than the Indonesia Criminal Code because in Malaysia Penal Code has a more detailed definition as in the articles 375 and 376. And the broader definition in the crime of rape.
CHAPTER V
CONCLUSIONS AND RECOMMENDATIONS

5.1 CONCLUSIONS

So the conclusion of the analysis in this legal research is the case of criminal acts of rape in Indonesia is still very high. Gender bias becomes one of the factors why the legal protection for victims of rape crime is still very weak. This gender bias exists not only in the social environment but also in Law Enforcement Officials. In addition there is still the assumption that if the victim suffered a crime of rape is a disgrace to be a barrier why many victims of rape crime who chose not to report what he has experienced.

Law Enforcement Officials are also considered to be less professional in performing their duties. Limited Human Resources impedes the process of resolving cases of rape and has not been able to provide a sense of justice for victims. Besides the Article contained in the Criminal Code is no longer relevant for current use.

Why is it difficult to disclose cases of rape crime is also supported by victims who do not dare or feel ashamed if this incident proceeded to the criminal realm. If not directly report to the police then the evidence in the Place of Genesis Case will be lost or polluted so that hinder the investigation process. It will also affect the outcome of Visum Et Repertum.
Legal Protection against victims of rape crime is in fact sufficient to protect the victim. But at the time of practice there are still many rights of the victim being violated which are not given properly to the Victims of Rape.

Malaysia more fully regulates the crime of rape than Indonesia. Malaysia also regulates minimal punishment for perpetrators of rape so that it will provide a sense of justice to the perpetrators of criminal acts of rape. Malaysia is also more heavily punishing the perpetrators of criminal acts of rape compared to Indonesia.

4.3 RECOMMENDATIONS

1. For the Government it is time to support the Legal Protection for victims of criminal rape by granting or revising the existing legislation. It is expected that in the future there will be legislation regulating legal protection for victims of criminal rape both before and / or after the Trial so that the victim feels safer and more comfortable in exposing the incident that he has experienced.

2. For Law Enforcement Officers are more professional in performing their duties and can empathize with victims of rape crime by not cornering victims of rape crime by asking questions that angle the victim and not really blaming the incident completely to the victim.

3. For the Society to dispel the view that women are a weak creature and do not think anymore that the crime of rape is a disgrace. Therefore, it is time for the
society to give moral spirit to the victims so that they will not experience any trauma.

4. For Victims of Rape Crime to immediately report the incident of rape crime so that the evidence in place of Genesis Case is not lost or polluted. And not to be ashamed or afraid to seek protection from the Witness and Victim Protection Agency in order to gain conscious recovery.
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