

The Criminalization of Marital Rape as a Criminal Offense of Sexual Violence: A Comparative Analysis of Criminal Law in Indonesia, Malaysia, and Brunei Darussalam

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Abstract. *Marital rape constitutes a form of sexual violence within marriage that continues to remain concealed behind patriarchal cultural norms, which position sexual obligations as the absolute right of the husband. Although globally recognized as a violation of human rights, the legal recognition of sexual coercion committed by a husband varies significantly across jurisdictions. This research is grounded in the increasing incidence of gender-based violence in Indonesia, Malaysia, and Brunei Darussalam, as well as the absence of an in-depth comparative study concerning the legal framework governing marital rape in these three countries, which share closely related historical, cultural, and family law traditions. This study employs a normative-juridical approach combined with comparative legal analysis. It integrates Feminist Legal Theory as an analytical framework to examine unequal power relations within marriage and Comparative Law Theory to assess differences in legal regulations and the effectiveness of legal protection mechanisms. The data were obtained from statutory regulations, court decisions, academic literature, and official national and international reports. The findings of this study demonstrate, among others, that: (1) the urgency of regulating marital rape lies not merely in recognizing it as a criminal offense, but also in the necessity for the law to rectify unequal power relations within marriage. In the absence of clear legal regulation, sexual coercion within the household will continue to remain hidden, underreported, and inadequately prosecuted. (2) Indonesia has adopted the most progressive approach by recognizing sexual coercion within marriage as a criminal offense through the Law on Sexual Violence Crimes and the 2023 Criminal Code. Malaysia continues to maintain the marital rape exemption, thereby allowing criminal liability only in cases involving physical violence. Brunei Darussalam remains the most restricted.*

Keywords: *Criminal; Law; Marital Rape; Sexual Violence.*

1. Introduction

Marital rape has been internationally recognized as a violation of human rights and a form of gender-based sexual violence (Jeubelie, 2024). The United Nations, through the Declaration on the Elimination of Violence against Women (1993), affirms that sexual violence, including that occurring within the household, constitutes a manifestation of unequal power relations between men and women (Deane, 2024). Nevertheless, the recognition of marital rape within criminal law continues to vary significantly across jurisdictions. Indonesia, Malaysia, and Brunei Darussalam are three Southeast Asian countries that share close historical and cultural ties, as well as strong Islamic influences in their family law systems. However, they exhibit differing legal responses to violence within marriage. Indonesia has recognized sexual coercion within marriage as a criminal offense through the Law on Sexual Violence Crimes and the 2023 Criminal Code. Malaysia continues to maintain the marital rape exemption, thereby limiting law enforcement efforts to narrowly defined criminal provisions. Meanwhile, Brunei Darussalam still excludes marital rape from the legal definition of rape offenses. These differences in legal regulation reflect variations in criminal policy that may affect reporting rates, law enforcement practices, and the overall effectiveness of legal protection afforded to victims. The urgency of this issue is reflected in the increasing number of documented cases of gender-based violence across the region. The 2024 Annual Report of the National Commission on Violence against Women (*Komnas Perempuan*) recorded 330,097 cases of violence against women in Indonesia, the majority of which occurred within the personal or domestic sphere (*Komnas Perempuan*, 2024). This figure represents an increase of 14.17% compared to 2023, when 289,111 cases were documented. Of the total number of cases, gender-based violence against women within the personal sphere remained dominant, accounting for 309,516 cases, followed by 12,004 cases in the public sphere and 209 cases involving state-related violence (*Komnas Perempuan*, 2024). This increase not only reflects the increasingly complex reality of violence against women but also results from changes in the data collection methods implemented by *Komnas Perempuan*.

In Malaysia, official statistics from the Royal Malaysia Police compiled by the Women's Aid Organisation indicate that the number of reported rape cases remains relatively high each year, amounting to approximately 1,738 cases in 2019, 1,582 cases in 2020, 1,553 cases in 2021, and increasing to 1,712 cases in 2022 (Women's Aid Organisation, 2025). However, these data do not specifically identify how many of these reports constitute cases of marital rape, as Malaysia still lacks a separate recording mechanism for sexual coercion within marriage. Meanwhile, Brunei Darussalam has yet to criminalize marital rape, resulting in the absence of official data or separate statistics concerning cases of sexual coercion within marriage. The absence of a legal framework explicitly classifying forced sexual intercourse by a husband as a criminal offense means that the state lacks a specific reporting and documentation mechanism for this category of violence. Nevertheless, social protection reports indicate the existence of sexual violence cases in general; the *UN Women Brunei Report 2024* recorded one rape case reported through the social protection system in 2022 (UN Women, 2024). This figure cannot accurately represent the actual conditions, as marital rape is not legally recognized as a crime and therefore is excluded from official criminal statistics.

Academic studies concerning marital rape have been developed by numerous scholars from various perspectives. Research conducted by Wulandari (2021) revealed that marital rape frequently goes unreported because legal systems in many countries continue to perceive marriage as an inherent sexual contract, thereby assuming that a wife has provided permanent consent (Wulandari & Saipudin, 2021). Furthermore, studies by Beni (2023) and Salsabila (2024) highlight that Article 477 of the 2023 Indonesian Criminal Code (*KUHP 2023*) has recognized rape within marriage as a criminal offense punishable by up to twelve years of imprisonment. From the perspective of Islamic law, marital rape is likewise considered unjustifiable under certain circumstances and contrary to the principles of consent and public welfare (*maslahah*). These studies emphasize the need to harmonize positive law with Islamic law to strengthen legal protection for victims.

A comparative study conducted by Harry Anak Jeubelie et al. (2024) examining India, Malaysia, and Singapore demonstrates that these three countries provide significantly different levels of legal protection regarding marital rape (Jeubelie, 2024). India continues to maintain a legal exemption that prevents marital rape from being criminally prosecuted, rendering its protection framework the weakest among the three jurisdictions. Malaysia occupies an intermediate position because it has not yet fully criminalized marital rape. Although several criminal provisions may be applied, they are neither specific nor easily enforceable. Meanwhile, Singapore is regarded as the most progressive jurisdiction because it has explicitly abolished the marital rape exemption and criminalized domestic sexual violence. Overall, the study underscores the urgent need for legal reform to strengthen protection for victims of marital rape. Nevertheless, no prior research has comprehensively compared the legal frameworks of Indonesia, Malaysia, and Brunei Darussalam within a single integrative study.

2. Research Methods

The research method employed in this study is a normative-juridical approach with a comparative analysis method focusing on the examination of positive legal norms, legal principles, doctrines, and law enforcement practices concerning the criminal offense of marital rape in Indonesia, Malaysia, and Brunei Darussalam. The normative-juridical approach is used because this study emphasizes the analysis of the synchronization of statutory regulations, legal construction, and the effectiveness of legal protection for victims of sexual violence within marital relationships. In this perspective, law is understood as a set of norms examined through legislation, court decisions, and relevant legal doctrines. Meanwhile, the comparative approach is utilized to identify the similarities, differences, characteristics, and weaknesses in the regulation of marital rape in the three countries in order to formulate recommendations for criminal law reform that are more responsive to the protection of women's rights and victims of sexual violence in domestic settings. This comparative approach is essential, given that Indonesia, Malaysia, and Brunei Darussalam have different legal systems, namely a combination of national law, Islamic law, and common law influences that shape legal constructions of sexual relations within marriage.

This research is grounded in Feminist Legal Theory developed by Catharine A. MacKinnon, which argues that law is not always gender-neutral because it often reproduces patriarchal power relations that place women in subordinate positions. This theory is employed to analyze how the legal systems in Indonesia, Malaysia, and Brunei Darussalam construct legal understandings regarding sexual consent within marriage, recognition of women's bodily autonomy, and forms of legal protection for victims of marital rape. In addition, this study applies Comparative Law Theory, as developed by Esin Örüçü and David Nelken, to examine the development of regulations, the characteristics of criminal offenses, and law enforcement mechanisms related to marital rape within legal systems influenced by legal pluralism, religious values, and patriarchal culture in each country. Through the application of these two theories, this research seeks to position marital rape not merely as a criminal law issue, but also as a matter of human rights, gender justice, and the protection of women's dignity.

The research data were obtained through library research derived from primary, secondary, and tertiary legal materials. Primary legal materials include various relevant statutory regulations, such as the Indonesian Criminal Code, Law Number 12 of 2022 concerning Sexual Violence Crimes, the Malaysian Penal Code, the Malaysian Domestic Violence Act 1994, as well as criminal law and Islamic family law provisions in Brunei Darussalam, including the Syariah Penal Code Order 2013. This study also uses court decisions and law enforcement practices to analyze the implementation of legal norms in judicial practice. Meanwhile, secondary legal materials include books, scientific journals, academic articles, reports from international institutions, previous research findings, and publications by human rights organizations on sexual violence in marriage, women's protection, and criminal law reform. Tertiary legal

materials, such as legal dictionaries, encyclopedias, and other supporting sources, are used to strengthen the conceptualization of terms and the study's theoretical framework.

The focus of this research is directed toward three main aspects. First, to analyze the urgency of criminalizing marital rape as a form of sexual violence that violates human rights, women's bodily integrity, and the principle of gender equality. Second, to compare legal regulations, characteristics of criminal offenses, criminal elements, the scope of criminalization, and law enforcement mechanisms concerning marital rape in Indonesia, Malaysia, and Brunei Darussalam. Third, to evaluate the effectiveness of legal protection for victims, including access to justice, procedural protection, victim recovery, obstacles in legal implementation, and the influence of patriarchal culture and religious interpretations on law enforcement in each country. Data analysis is conducted descriptively and analytically using thematic and comparative analysis to identify patterns of legal regulation, orientations of criminal policy, levels of protection of women's rights, and trends in legal reform across the legal systems of the three countries. Through this method, the study is expected to contribute academically to the development of criminal law and the protection of women's rights, while also offering policy recommendations that are more progressive and victim-oriented in addressing marital rape in Southeast Asia.

3. Results and Discussion

3.1. The Legal Urgency of Marital Rape as a Criminal Act of Sexual Violence

Sexual violence within the institution of marriage, universally referred to as marital rape, constitutes a paradox within the modern criminal law system. On the one hand, rape is recognized as one of the most serious crimes against human dignity and human integrity; yet on the other hand, the institution of marriage in various traditional legal systems has often been used as a normative shield to legitimize sexual domination and the deprivation of women's bodily autonomy. From the perspective of contemporary criminal law and human rights, marital rape is understood as any form of sexual intercourse or penetration committed by one spouse against the other without freely given, conscious, and voluntary consent (Estrich, 1987). This concept emphasizes that the existence of a marital bond does not eliminate an individual's right to bodily integrity or the right to refuse sexual relations, as sexual consent must be regarded as a personal, dynamic right that may be withdrawn at any time (MacKinnon, 1989).

The historical roots of the rejection of marital rape as a criminal offense cannot be separated from the development of criminal law and family law within Western legal traditions, which later spread to various parts of the world through legal colonialism. From a legal-historical perspective, legal constructions of husband-wife relations were originally built on patriarchal principles that positioned men as holders of absolute authority within the household. At the same time, women were placed in subordinate positions under their husbands' authority.

Consequently, sexual relations within marriage were viewed as the absolute right of the husband that the wife's will could not limit. This paradigm gave rise to the doctrine of marital rape exemption, namely the exclusion of criminal liability for husbands who forced sexual intercourse upon their wives. This doctrine was formally articulated by Sir Matthew Hale in his monumental work *Historia Placitorum Coronae* in 1736, which stated that a husband could not be criminally prosecuted for raping his own wife (Hale, 1736).

Juridically, Hale's argument was rooted in the marital contract theory, under which marriage was viewed as the transfer of a wife's personal rights to her husband, including rights over her body and sexual activity. Within this construction, women were deemed to have given permanent sexual consent to their husbands at the time the marriage was concluded, and such consent could not be withdrawn for as long as the marriage continued (Hale, 1736). This understanding demonstrates that the law at the time did not regard consent as the principal element in marital sexual relations; rather, marital status itself was treated as absolute legal legitimacy for the husband's sexual access to the wife's body. Consequently, elements of coercion or violence lost their juridical relevance as long as the acts occurred within a legally recognized marriage.

This doctrine gained further legitimacy within the tradition of English Common Law through the concept of *feme covert*, which held that a wife's legal identity merged with that of her husband upon marriage (Shanley, 1989). Under this concept, women lost independent legal capacity to own property, enter into contracts, or initiate legal actions autonomously. Normatively, the construction of *femme covert* positioned women not as autonomous legal subjects, but rather as part of the husband's domestic authority. Therefore, women's bodies were regarded as part of the husband's property rights (*chattel theory*), such that the state lacked legitimacy to intervene in sexual acts occurring within the domestic sphere (Pateman, 1988). This perspective demonstrates that the exemption of rape within marriage was not merely a moral or cultural issue, but rather a legal construction that systematically perpetuated women's subordination.

Several fundamental elements may be used to comprehensively understand the characteristics of marital rape, including: (Effendi, 2024). First, the existence of sexual acts or penetration committed by the perpetrator against their spouse. Second, the absence of free and conscious consent from the victim. Consent obtained through coercion, emotional pressure, threats, or when the victim is incapable of providing valid consent cannot be regarded as lawful consent. Third, the existence of coercion, whether in the form of physical violence, threats, intimidation, abuse of power, or actions that place the victim in a vulnerable condition. Furthermore, such acts of violence occur within the context of marriage, in which the status of husband or wife cannot serve as a justification or exemption from criminal liability.

In the development of modern law, the doctrine of marital rape exemption has increasingly been viewed as inconsistent with the principles of democratic rule of law that uphold human rights, gender equality, and the protection of individual bodily integrity. This paradigm shift has been influenced by the development of international legal instruments such as the Universal Declaration of Human Rights (1948), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979, and the Declaration on the Elimination of Violence against Women 1993, all of which recognize sexual violence as a violation of human rights and a form of gender-based discrimination, particularly as reflected in the following provision:

“Physical, sexual, and psychological violence occurring within the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation, and other traditional practices harmful to women...”

Within this framework, marriage is no longer understood as a subordinative relationship based on ownership, but rather as a legal relationship grounded in equality, respect for human dignity, and mutual consent.

In the context of legal practice in Indonesia, recognition of marital rape as a form of sexual violence within domestic relations is still developing gradually. It has not yet obtained a fully comprehensive normative formulation within the national criminal law system. One important precedent is the Bangil District Court's Decision Number 912/Pid/B/2011/PN.BGL demonstrated that forced sexual intercourse committed by a husband against his wife could be prosecuted as a criminal act of domestic violence. The decision is significant because it illustrates judicial willingness to interpret sexual violence within the domestic sphere as a violation of women's bodily integrity and dignity, even though the Indonesian Criminal Code (KUHP) at that time did not explicitly regulate marital rape as a separate criminal offense (Djafri & Munawir, 2024). Nevertheless, law enforcement practices continue to show that victim protection largely depends upon judicial perspectives, the sensitivity of law enforcement officers, and the victim's ability to present evidence, which is often difficult to obtain within the private sphere of domestic relations.

Normatively, Indonesia has actually experienced progressive legal developments through the enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, particularly Article 8 letter a, which states:

“Sexual violence as referred to in Article 5 letter c includes: a. forced sexual intercourse against a person residing within the household.”

Furthermore, Article 46 concerning criminal provisions states:

“Any person who commits acts of sexual violence as referred to in Article 8 letter a shall be punished with imprisonment for a maximum of 12 (twelve) years or a fine of up to Rp36,000,000.00 (thirty-six million rupiah).”

These provisions recognize forced sexual intercourse within the household as a form of sexual violence. However, the formulation of these norms is still considered problematic because it does not explicitly use the terminology of marital rape nor integrate the concept of consent as the primary element of sexual offenses. Consequently, legal implementation is often still influenced by patriarchal paradigms that regard sexual relations within marriage as a wife’s obligation to her husband. Several recent studies indicate that law enforcement officials in Indonesia still tend to mediate such cases, encourage domestic reconciliation, or perceive marital rape as a private family conflict rather than as a crime against the victim’s bodily integrity and sexual autonomy (Saraswati & Sulaiman, 2023). This situation causes many victims to hesitate to report incidents due to fears of victim-blaming, social stigma, and distrust in the criminal justice system.

The strengthening of legal protection began to emerge through the enactment of Law Number 12 of 2022 concerning Sexual Violence Crimes, which adopts a victim-centered approach and broadens the understanding of sexual consent and power relations. Although the law does not explicitly mention the term marital rape, its substantive provisions demonstrate recognition that marriage cannot serve as a justification for acts of sexual violence. From the perspective of progressive law, the existence of this legislation constitutes an important indicator that the state is gradually shifting from a moralistic paradigm toward a paradigm centered on the protection of human rights and bodily integrity.

In contrast to Indonesia, which has begun to demonstrate normative development, Malaysia continues to face structural problems due to the persistence of the doctrine of marital rape exemption within its criminal law system. The Malaysian Penal Code recognizes the offense of “causing hurt in order to have sexual intercourse” through Section 375A; however, this provision does not recognize rape within marriage as a complete offense of rape. Consequently, non-consensual sexual relations within marriage are not legally positioned on an equal footing with rape occurring outside marriage. Various reports by civil society organizations and recent academic studies indicate that this condition creates a gap in legal protection for victims, as victims can only obtain limited protection through the Domestic Violence Act 1994, whose orientation is more focused on domestic protection rather than recognition of violations against sexual integrity (Vitria, 2023).

Recent research published in the *Journal of International Women’s Studies* also demonstrates that patriarchal culture and conservative interpretations of husband-wife relations remain major obstacles to legal reform in Malaysia. Many victims of marital rape choose not to report incidents because they fear being regarded as violating family norms, not being believed by authorities, or being morally blamed by society (Ismail & Abdul Rahim, 2024). Therefore,

although Malaysia possesses instruments for protection against domestic violence, the absence of explicit criminalization of marital rape continues to create legal impunity for perpetrators and weakens the position of victims within the criminal justice system.

Meanwhile, the situation in Brunei Darussalam is even more restrictive. To date, Brunei's legal system has not recognized marital rape as a criminal offense, either within the framework of civil criminal law or under the implementation of the Syariah Penal Code Order 2013. The absence of criminalization means that court decisions specifically discussing marital rape are nearly nonexistent, causing the phenomenon to remain invisible in official national crime statistics. Annual reports issued by the Fore ctimization, namely, further suffering caused by negative responses from both the social environment and legal institutions.

From the various cases of marital rape occurring in Indonesia, Malaysia, and Brunei Darussalam, it can be observed that the existence of regulations concerning marital rape occupies a highly urgent position within the modern criminal law system, particularly as part of the regime of sexual violence offenses aimed at guaranteeing human rights, eliminating gender-based discrimination, and strengthening the protection of women (Sinaga & Apriyani, 2024). Juridically, the regulation of marital rape is not merely related to the criminalization of an act, but also represents state recognition of the principles of bodily integrity, sexual consent, and equality within marital relations. In the context of a democratic rule-of-law state, marriage cannot serve as a legitimate basis for depriving an individual of their fundamental rights over their own body and free will. Therefore, the absence of explicit regulation concerning marital rape essentially reflects the failure of the state to provide legal protection for victims of sexual violence within the domestic sphere.

From the perspective of Feminist Legal Theory, the need for marital rape regulation arises because law is fundamentally never entirely neutral, but is often shaped within patriarchal social structures that position women as subordinate parties in both social and familial relations (Keumala et al., 2025). Feminist legal theory criticizes traditional legal systems for being historically constructed based upon male-centered experiences and perspectives, thereby causing women's experiences, particularly those relating to sexual violence within the household, to be ignored or treated merely as private matters. Within this framework, the law tends to fail to recognize that marital relations may also become spaces for domination, control, and sexual violence against women. Therefore, feminist legal scholars argue that the state must establish regulations that explicitly protect women from gender-based violence while simultaneously deconstructing social norms that normalize women's subordination within marriage.

First, regulations concerning marital rape are necessary to eliminate the historical bias embedded within the doctrine of marital rape exemption, namely the doctrine excluding rape within marriage from criminal liability (Rohmah & Anwar, 2023). Historically, this doctrine emerged from patriarchal legal constructions that positioned husbands as holders of sexual

authority over their wives' bodies. Consequently, sexual relations within marriage were viewed as the husband's absolute right, while the wife's consent was considered irrelevant after the marriage contract had been concluded. In social practice, this paradigm continues to survive through the belief that husbands possess full rights over their wives' bodies and that wives are obligated to fulfill all of their husbands' sexual needs unconditionally. Such social constructions cause many women to fail to recognize that forced sexual intercourse within marriage constitutes a form of sexual violence and a violation of human rights. Indeed, many victims internalize such violence as merely a "wife's obligation," thereby choosing silence and refraining from reporting the abuse.

From juridical and victimological perspectives, this condition demonstrates that the absence of explicit regulation actually strengthens a culture of impunity for perpetrators of marital rape. Unequal power relations within households place women in vulnerable positions economically, socially, and psychologically. In many cases, husbands feel entitled to force sexual intercourse because of the existence of marriage, while women lose the space to refuse or maintain bodily autonomy. Recent research demonstrates that marital rape has multidimensional impacts upon victims, ranging from physical injuries, reproductive health disorders, depression, and post-traumatic stress disorder (PTSD), to the loss of safety and security within domestic relationships (Cárdenas-Castro & Salinero-Rates, 2024). Accordingly, marital rape is not merely a domestic moral issue, but rather a form of sexual violence that concretely damages the dignity and quality of life of victims.

Second, regulations concerning marital rape constitute a highly important legal instrument that guarantees victim protection and ensures access to justice (Situmorang & Hutapea, 2023). In many cases, women who experience sexual coercion by their husbands face structural barriers in reporting such acts, including economic dependency, family pressure, fear of divorce, social stigma, and threats of further violence if their cases are disclosed publicly (Lippi, 2025). In addition, law enforcement officials often continue to perceive marital rape as a private domestic matter that should preferably be resolved through family mediation rather than through criminal justice mechanisms. As a result, victims frequently experience secondary victimization, namely further suffering caused by negative responses from both the social environment and legal institutions.

3.2. Criminalization of Marital Rape in Indonesia, Malaysia, and Brunei Darussalam: A Comparative Juridical Analysis of Women's Protection

Comparative Law Theory views comparative legal analysis as an instrument for identifying applicable legal rules (Nafisah et al., 2024). Accordingly, comparative law does not merely distinguish normative legal texts, but also evaluates the rationality of legal policies and the extent to which such policies favor and protect victims. The need to examine and compare marital rape regulations in these three countries becomes increasingly significant because Indonesia, Malaysia, and Brunei Darussalam recognize the Declaration on the Elimination of

Violence against Women (DEVAW), namely the United Nations General Assembly Declaration which establishes that all forms of violence against women, including sexual violence occurring within the domestic sphere, constitute violations of human rights and place the state under an obligation to prevent, investigate, and punish such acts.

Indonesia, Malaysia, and Brunei Darussalam share historical and cultural similarities, particularly in patriarchal social structures and the dominance of strong family values. Nevertheless, despite their sociological proximity and relatively similar cultural foundations, the three countries have developed in different directions in formulating legal protection against marital rape within marriage

In Indonesia, marital rape is legally regulated as a criminal act of sexual violence. Indonesian legislation does not explicitly use the term marital rape; however, several provisions contained in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Law Number 12 of 2022 concerning Sexual Violence Crimes, and the Indonesian Criminal Code under Law Number 1 of 2023 concerning the Criminal Code provide a juridical basis for prosecuting acts of forced sexual intercourse within marriage (Fitriyah et al., 2023). Article 8 letter (a) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence defines one form of sexual violence as:

“forced sexual intercourse committed against a person residing within the household sphere” (Mintarsih, 2025).

Furthermore, Article 46 generally stipulates a maximum penalty of twelve years’ imprisonment if such sexual violence causes serious injury, health disorders, or suffering to the victim.

More progressive developments can be observed in Law Number 12 of 2022 concerning Sexual Violence Crimes. Article 6 paragraph (2) explicitly states that sexual violence may occur “both within and outside marriage,” thereby clearly incorporating forced sexual intercourse within marriage as a form of criminally punishable sexual violence (Nova, 2025). The provision states that any person who commits physical sexual acts through violence, threats of violence, or by unlawfully placing another person under their control shall be punished with imprisonment for a maximum of twelve years and/or a fine of up to Rp300,000,000.00. Therefore, Law Number 12 of 2022 concerning Sexual Violence Crimes not only recognizes the existence of marital rape, but also imposes criminal sanctions equivalent to those applied to other forms of sexual violence.

The regulation of marital rape has gained a stronger juridical foundation through the enactment of the national Criminal Code under Law Number 1 of 2023 concerning the Criminal Code. Within this new Criminal Code, Article 476 contains provisions that broaden the understanding of the criminal offense of rape. Article 477 paragraph (1) states that (Ministry of Law and Human Rights of the Republic of Indonesia, 2023):

“Any person who, through violence or threats of violence, forces another person to engage in sexual intercourse with them shall be punished for committing rape with imprisonment for a maximum of 12 years.”

This formulation does not distinguish whether the act is committed by a husband or by another person, thereby extending the scope of the offense to include forced sexual intercourse within marriage. Furthermore, Article 477 paragraph (6) explicitly stipulates that if the criminal act is committed within a marital relationship, prosecution may only be initiated upon the complaint of the victim, thereby clarifying that marital rape constitutes a complaint-based offense (*delik aduan*) (Wahdah, 2025).

Accordingly, although the term marital rape is not explicitly mentioned within Indonesian legislation, the matter is substantively regulated under Law Number 12 of 2022 concerning Sexual Violence Crimes, which explicitly criminalizes acts of sexual coercion without excluding husband-wife relations from the scope of the offense. Moreover, the new Criminal Code under Law Number 1 of 2023 provides an additional juridical basis for prosecuting rape offenses occurring through sexual coercion within marriage. Thus, the Indonesian legal framework has progressively moved toward full recognition that marriage does not eliminate women’s rights to bodily integrity and sexual consent. This position reflects a progressive legal approach grounded in the protection of human rights and gender equality.

In Malaysia, the empirical condition illustrates a sense of helplessness arising from a partial legal architecture. The absence of criminal status for marital rape has contributed to the increasing escalation of domestic violence. Based on the 2024–2025 Statistical Report published by Women's Aid Organisation (WAO), the number of cases of violence against women handled by the organization increased sharply, from 5,209 in 2024 to 7,939 in 2025.

Table 1. Trends in the Increase of Violence Against Women Cases in Malaysia (WAO Data 2024–2025)

Case Indicators	2024	2025	Description/Trend
Total Cases Handled by WAO	5,209 cases	7,939 cases	Significant increase, reflecting the escalation of violence.
General Inquiries/Consultations	2,691 cases	3,952 cases	Increasing demand for legal and psychological assistance.
Reported Domestic Violence	1,162 cases	1,759 cases	Husbands were identified as the dominant

Cases			perpetrators.
Technology-Based Harassment (Cyber Violence)	92 cases	251 cases	Increased by more than twofold, indicating the expansion of violence through digital media.
Majority Income Level of Victims	RM0 – RM1,500	RM0 – RM1,500	Strong correlation between domestic violence and economic vulnerability (financial dependency).

Source: WAO Annual Report 2024

From the perspective of law enforcement, the implementation of Section 375A of the Malaysian Penal Code, which imposes criminal sanctions upon husbands who cause physical injury or fear of death in order to obtain sexual intercourse, continues to face various juridical and evidentiary obstacles. Fundamentally, the provision does not fully recognize marital rape as a criminal offense of rape, but merely criminalizes acts of physical violence occurring within marital sexual relations (Abdullah, 2018). In practice, Section 375A is difficult to implement effectively because the principal element that must be proven is the existence of *hurt* or physical injury. Consequently, various forms of non-physical sexual coercion, such as psychological intimidation, emotional threats, economic manipulation, intoxicating the wife, or forcing sexual intercourse when the wife is ill, cannot be qualified as criminal acts under the provision (Yusof & Aziz, 2020). This condition demonstrates that legal protection for victims remains highly limited and has not yet been capable of addressing the full spectrum of sexual violence within marriage.

Within the Malaysian legal system, marital rape is not fully categorized as a criminal offense (Jeubelie, 2024). Nevertheless, Section 375A of the Penal Code Act 574 continues to preserve the husband's exemption within the legal definition of rape. Section 375 explicitly states that "sexual intercourse by a man with his own wife is not rape." This means that, in general, Malaysian law does not recognize marital rape as rape unless certain specific elements are present. However, Malaysia criminalizes one form of coercion through Section 375A, which provides that a husband who causes hurt or fear of hurt in order to have sexual intercourse with his wife may be punished with imprisonment for up to five years.

Despite this provision, numerous criticisms argue that Section 375A remains inadequate because it only criminalizes *hurt* or threats of physical injury, and does not classify psychological coercion without physical harm as rape. Furthermore, Malaysia primarily relies on the Domestic Violence Act 1994 as its non-criminal protection mechanism, issuing protection orders. Consequently, the Malaysian approach continues to reflect a strong patriarchal bias because it positions sexual relations as a marital obligation, except where accompanied by dangerous violence that can be physically proven.

Brunei Darussalam continues to maintain highly limited legal protection against sexual coercion committed by husbands (Müller, 2020). Under the Penal Code Cap. 22, there is an explicit exemption stating that sexual intercourse between a husband and wife (provided that the wife has reached a certain age) “shall not be regarded as rape.” Consequently, marital rape is not criminalized as rape within the framework of general criminal law. As an alternative, protection is provided through Islamic family law instruments such as the Islamic Family Law Order 2010 and the Married Women Act Order 2010, which allow for the issuance of protection orders in cases involving harm or coercion within religious or domestic contexts. Nevertheless, these mechanisms tend to be civil in nature and do not always guarantee severe criminal sanctions against husbands who commit acts of sexual coercion within marriage.

Table 2. Comparative Legal Aspects of Marital Rape Regulations in Indonesia, Brunei Darussalam, and Malaysia

Aspect	Indonesia	Malaysia	Brunei Darussalam
Legal System	A mixed legal system combining civil law, customary law, and religious law. Criminal law reform has begun integrating human rights approaches and victim protection. Juridical analysis: The state is gradually shifting from a moralistic paradigm toward the protection of human rights and women’s bodily integrity.	A dualistic legal system combining English common law and Islamic law. Juridical analysis: Legal dualism creates normative disharmony concerning women’s protection because criminal law maintains the marital rape exemption while domestic law provides only limited protection.	A legal system based on common law and Islamic Syariah, with the dominance of a religious-conservative approach. Juridical analysis: Marriage is positioned as a moral-religious institution, limiting state intervention in sexual relations within households.
Primary Sources of Law	Law Number 23 of 2004 concerning the Elimination of Domestic Violence; Law Number 12 of 2022 concerning Sexual Violence Crimes; Article 477 of the 2023 Criminal Code; Articles 28G and 28I of the 1945 Constitution. Analysis: Strengthening of human rights norms and recognition of domestic sexual violence as a public issue and criminal offense.	Penal Code Act 574; Sections 375 and 375A; Domestic Violence Act 1994; Islamic Family Law. Analysis: Victim protection focuses more on domestic violence rather than violations of women’s sexual integrity.	Penal Code Cap. 22; Syariah Penal Code Order 2013; Islamic Family Law Order. Analysis: The legal system does not recognize sexual consent within marriage as a basis for criminalization.
Regulation of Marital Rape	Implicitly regulated through the concept of “forced sexual intercourse within the household” and Article 477 of the 2023 Criminal Code. Analysis: Indonesia has begun recognizing that	Not fully criminalized as rape. Husbands may only be prosecuted if there is evidence of severe physical violence or real threats.	Not criminalized at all. Sexual intercourse within marriage is regarded as a husband’s right during a valid marriage.

marriage does not eliminate the possibility of rape.

Concept of Consent	Sexual consent has begun to be implicitly recognized through victim-protection approaches under the TPKS Law. Analysis: There is a shift toward a consent-based relationship paradigm, although consent is not yet explicitly formulated in the Criminal Code.	Sexual consent within marriage is not recognized as a primary element. The focus remains on proof of physical violence.	Sexual consent within marriage is not considered a relevant legal element.
Status of Marital Rape in Criminal Law	Recognized as a criminal act of sexual violence within marriage, although not explicitly termed marital rape. It is categorized as a complaint-based offense.	Not recognized as a criminal offense of rape. Protection exists only under the domestic violence regime.	Not recognized as a criminal offense, and no special criminal mechanism exists.
Doctrine of Marital Rape Exemption	Gradually being abandoned through criminal law reform and human rights approaches.	Still maintained within the Penal Code through exemptions for husbands.	Explicitly maintained and reinforced through religious-conservative approaches.
Legal Definition/Formulation	Article 477 of the 2023 Criminal Code regulates forced sexual intercourse through violence or threats of violence, including within marriage. Analysis: The formulation remains problematic because it does not explicitly use the term "consent."	Section 375 of the Penal Code excludes sexual intercourse by a husband with his wife from the definition of rape.	Rape applies only to sexual relations occurring outside a valid marriage.
Position of the Victim	Victims are increasingly recognized as subjects who require protection under the TPKS Law through the victim-centered approach.	Victims are still positioned within the framework of domestic protection rather than as full victims of sexual violence.	Victims do not receive legal recognition as victims of marital rape.
Subject of the Offense	Any person, including husbands against wives.	Husbands are exempt from being categorized as perpetrators of rape.	Husbands are not considered capable of raping their own wives.

Type of Offense	Complaint-based offense in certain marital cases. Analysis: This demonstrates that the state still views domestic relations as part of the private sphere.	No specific offense for rape within marriage.	No offense regulation exists.
Types of Sanctions	Maximum imprisonment of 12 years for rape; penalties may be aggravated if resulting in severe injury or psychological trauma.	No specific criminal sanctions for marital rape. Perpetrators may only be punished for domestic violence.	No criminal sanctions exist because the act is not categorized as a crime.
Criminal Penalties	Article 477 of the Criminal Code: maximum 12 years; some forms of sexual violence may carry penalties up to 20 years.	Non-marital rape may be punished with up to 20 years' imprisonment, but this does not apply to husbands.	Rape penalties of up to 30 years do not apply within marital relationships.
Victim Protection Mechanisms	Protection is available under the PKDRT Law and the TPKS Law, including restitution, assistance, rehabilitation, and witness protection.	Limited protection through the Domestic Violence Act in the form of physical protection and court-issued protection orders.	Victim protection is extremely limited and largely based on family mediation or moral-religious approaches.
Evidentiary Standards	Proof remains difficult because violence occurs within the private domestic sphere. Analysis: Victims frequently experience victim-blaming and difficulties in proving a lack of consent.	Evidence focuses on physical violence rather than the absence of consent.	There is almost no evidentiary mechanism because the act is not recognized as a crime.
Feminist Legal Theory Perspective	Beginning to accommodate feminist critiques regarding women's subordination within marriage.	The legal structure continues to reproduce patriarchal domination through the marital rape exemption doctrine.	The legal system reinforces subordinate relations based on patriarchy and religious conservatism.
Weaknesses of Regulation	No explicit marital rape terminology; complaint-based offense; difficult evidentiary process; implementation by law enforcement remains insufficiently gender-sensitive.	The exemption doctrine remains; victims face difficulties in obtaining substantive justice.	The absence of criminalization creates total impunity for perpetrators.

Direction of Legal Reform	Moving toward strengthening victim protection and expanding a consent-based approach.	Pressure exists from human rights organizations and civil society to abolish the marital rape exemption doctrine.	Legal reform remains highly limited due to the dominance of conservative approaches within national legislation.
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Source: based on author analysis

Comparative analysis reveals that the differences in marital rape regulations among the three countries demonstrate that legal reforms in Indonesia, particularly through Law Number 12 of 2022 concerning Sexual Violence Crimes and the new Law Number 1 of 2023 concerning the Criminal Code, reflect progressive legal development concerning the issue of marital rape by providing broader recognition within criminal law. According to the Development Law paradigm, law must function as an instrument of social change and the realization of justice (Tochukwu, 2021). In this context, the state responds to the reality of domestic violence and increasing demands for gender equality by strengthening legal protection for victims. Malaysia adopts an intermediate position by partially recognizing the issue through the criminalization of violence used to force sexual intercourse, without fully recognizing the concept of rape within marriage. Meanwhile, Brunei Darussalam continues to maintain a traditional model that does not recognize sexual coercion committed by husbands as a criminal offense.

This configuration of legal differences demonstrates the ongoing tension between legal modernization, international human rights standards, and the dominance of patriarchal values within each country, strongly influencing the legal framework concerning marital rape. Such a comparison is important in revealing the existing normative gap, namely, how the positive law of the three countries interacts with the social reality of sexual violence within domestic relations, as well as the challenges of legal implementation within each jurisdiction. Furthermore, the comparison also demonstrates that the stronger the legal recognition of the principle of sexual consent, the greater the level of protection afforded to women. Indonesia appears relatively more progressive because it has begun adopting a consent-based crime paradigm within its legal regulations (Fitriyah et al., 2023).

4. Conclusion

The urgency of regulating marital rape as a criminal act of sexual violence arises from the fundamental reality that the institution of marriage does not eliminate an individual's right to bodily autonomy and the principle of consent in sexual relations. Forced sexual intercourse committed by a spouse, even within the context of marriage, remains a violation of bodily integrity, human dignity, and fundamental human rights, and therefore must be treated equally to other forms of rape. Nevertheless, in many legal systems, marital rape is either not explicitly regulated or is excluded from the legal definition of rape, resulting in low reporting rates and weak legal protection for victims. Patriarchal social norms that position sexual relations as a wife's obligation and a husband's right further reinforce the perception that

sexual coercion within marriage is not a crime, thereby placing victims in vulnerable and unprotected positions. Concrete cases demonstrate that without clear criminal regulation, sexual coercion within marriage can easily be marginalized from the justice system. In Indonesia, the prosecution of marital rape as a criminal act of sexual violence still depends heavily upon complaint-based offenses, judicial legal construction, and evidentiary mechanisms, while in Malaysia and Brunei Darussalam, the persistence of the marital rape exemption doctrine effectively closes victims' access to criminal accountability. This condition confirms that the absence or weakness of legal regulation does not eliminate the practice of sexual violence within. Instead, it removes it from the sphere of state accountability. From the perspective of Feminist Legal Theory, the criminalization of marital rape constitutes an important instrument for correcting unequal power relations within marriage and affirming that the status of husband cannot serve as a legal justification for sexual coercion. Therefore, the regulation of marital rape as a criminal offense of sexual violence is an urgent necessity to guarantee the protection of human rights, eliminate gender-based discrimination, and ensure that the law functions as an effective mechanism of protection for victims rather than reproducing structural injustice. The comparison between Indonesia, Malaysia, and Brunei Darussalam demonstrates significant differences in the regulation of marital rape offenses. Indonesia has recognized sexual coercion within marriage as a criminal offense through Law Number 12 of 2022 concerning Sexual Violence Crimes and the new Law Number 1 of 2023 concerning the Criminal Code. These regulations provide a strong juridical basis for prosecuting husbands who force sexual intercourse, thereby affirming that marriage does not eliminate the necessity of consent. Meanwhile, Malaysia and Brunei Darussalam continue to maintain the doctrine of marital rape exemption, namely the exclusion of husbands from the legal definition of rape. Malaysia only criminalizes coercion accompanied by physical injury through Section 375A of the Penal Code. In contrast, Brunei Darussalam continues to maintain that sexual intercourse between husband and wife cannot be categorized as rape. This approach demonstrates that both countries still position sexual intercourse within marriage as a marital obligation rather than as an act requiring continuous consent. Overall, marital rape must be regarded as a serious violation of bodily integrity within marriage. Clear and comprehensive legal regulation is necessary to ensure that sexual relations within marriage remain based upon consent and that husbands cannot use marital status as a justification for committing acts of sexual violence.

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