

## MARITAL RAPE AND THE LIMITS OF CRIMINAL LAW: A COMPARATIVE CRITIQUE OF LEGAL GAPS IN INDONESIA AND SINGAPORE

Elizabeth Vania Angkawidjaja<sup>1</sup>, Emilia Metta Karunia Wijaya<sup>2</sup>

<sup>1</sup>Diponegoro University, <sup>2</sup>Soegijapranata Catholic University, Indonesia  
Author's email: [elizabethvaniaa@students.undip.ac.id](mailto:elizabethvaniaa@students.undip.ac.id), [metta@unika.ac.id](mailto:metta@unika.ac.id)

### ABSTRACT

Marital rape is a crucial issue in Indonesia and Singapore, influenced by patriarchal culture and legal loopholes. This study aims to analyse the comparison of marital rape laws between the two countries, identifying significant differences in legal systems, definitions, and criminal sanctions. Unlike the Indonesian Criminal Code, which does not explicitly recognize marital rape, Singapore has reformed its laws through the Criminal Law Reform Act 2019 to criminalize such acts. This study finds that Singaporean law can contribute to Indonesia, particularly in terms of arrest procedures, victim protection systems, and the concept of consent. Using a normative-juridical approach with comparative methods, this study provides recommendations for the modernization of Indonesian law, emphasizing the need for more specific regulations and the establishment of special family courts to ensure better protection for victims.

**Keywords:** marital rape; criminal law; Legal systems.

### A. Introduction

The world's legal systems are divided into civil law and common law. The civil law system, also known as the continental or Romano-Germanic legal system, is found on all continents and covers about 60% of the world. This system is based on concepts, categories, and rules derived from Roman law, with influences from canon law, and sometimes significantly supplemented or modified by local customs or culture.<sup>1</sup> Some alien features of the civil law Clear expression of rights and duties, so that remedies are self-evident; Simplicity and accessibility to the citizen, at least in those jurisdictions where it is codified; Advance disclosure of rules, silence in the code to be filled based on equity, general principles, and the spirit of the law; Richly developed and to some extent transnational academic doctrine inspiring the legislature and the judiciary.<sup>2</sup>

Conversely, the common law system originated in England and is based on previous court decisions as its legal foundation; in this system, judges have the authority to create

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1 LSU Law, "What is Civil Law?", <https://law.lsu.edu/clo/civil-law-online/what-is-the-civil-law/>

2 *Ibid*

laws<sup>3</sup>. Indonesia adheres to a civil law system, primarily grounded in the 1945 Constitution. This legal framework includes a codified system, which encompasses the Criminal Code. In contrast, Singapore operates under a common law system, defined by an adversarial process, where both parties in a dispute present their cases before a judge with the assistance of their lawyers<sup>4</sup>. Regardless of the differences between the civil law and common law systems, both systems face major challenges in responding to increasingly complex crimes and violations, such as rape.

Rape is a serious crime that affects human rights on a global scale. First article *Universal Declaration of Human Rights* (UDHR) declare that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood<sup>5</sup>. Many women are victims of violence or sexual abuse by their husbands (marital rape). The impact of rape not only harms victims psychologically, physically, and socially; however, it also has the potential to increase the “fear of crime” and disrupt public order<sup>6</sup>.

The United Nations (UN), as an international organization, pays special attention to the issue of sexual violence, including rape. This attention is manifested through the establishment of various international legal instruments designed to serve as guidelines for its member states. Indonesia and Singapore have ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is an international agreement regarding discrimination against women, and governments should take responsibility to solve it<sup>7</sup>. Both countries also signed the Declaration on the Elimination of Violence against Women (DEVAW), which seeks to prevent violence against women in all its forms.

Despite existing and ratified legal provisions, legal protection for victims of sexual violence at the national level still faces significant challenges. It is evident from statistical data showing that rape is a common form of sexual violence in Indonesia and Singapore. According to data obtained from the Annual Report of the National Commission on Violence Against Women for the period 2022-2023, there were 2,228 cases of sexual violence against women and 622 cases of marital rape in Indonesia<sup>8</sup>. Based on rape statistics by country obtained from wisevoter.com, Indonesia ranks 134th out of 144 countries with a

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3 Nurul Qamar, *Perbandingan Sistem Hukum dan Peradilan Civil Law Sytem dan Common Law System*, (Pustaka Refleksi, 2010), 47.

4 *Ibid*

5 Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru*, (Kencana, 2008), 58.

6 Suhita, D. R., Ratih, T., & Priyanto, B. “Psychological Impact on Victims of Sexual Violence: Literature Review”. *STRADA: Jurnal Ilmiah Kesehatan* 10 no. 1, (2021): 1414-1416.

7 *Breathe Studio*, “CEDAW”, Scwo.or.sg, 22 December 2016, accessed 14 September 2023, <https://www.scwo.org.sg/resources/cedaw/>.

8 Komisi Nasional Anti Kekerasan Terhadap Perempuan, “Catatan Tahunan Komnas Perempuan Tahun 2023 Kekerasan terhadap Perempuan di Ranah Publik dan Negara: Minimnya Perlindungan dan Pemulihan”, [Komnasperempuan.go.id](https://komnasperempuan.go.id), 7 Maret 2023, accessed 13 September 2023, <https://komnasperempuan.go.id/download-file/949>

rate of 0.48 cases per 100,000 people. Singapore ranks 76th with 5.95 cases per 100,000 people. Singapore's Minister of Law and Home Affairs, K. Shanmugam, recorded 11,868 reports of sexual violence from January 2018 to November 2022, including marital rape, sexual violence involving penetration, and sexual offenses involving children and vulnerable victims<sup>9</sup>.

Cases of sexual violence, especially rape, in Indonesia and Singapore show alarming figures. Many rapes occur within the private sphere, with perpetrators often being family members, husbands, or the victim's partner. Marital rape is violence committed by a husband against his wife to engage in sexual activity, often accompanied by threats or coercion when the wife refuses to comply. Wives who experience marital rape do not immediately receive protection because this topic is usually avoided in discussions.<sup>10</sup> Husbands or wives often prioritize their rights and neglect their obligations, which can lead to domestic violence when someone feels their rights are violated. Many marital rape cases in Indonesia are not prosecuted due to fear of public opinion, shame, and a lack of options. Empirical studies establish that stigma from a culture and a lack of legal awareness significantly deter victims from seeking legal recourse despite available legal protections. Victims often internalize societal norms tilting marital rape into a problem that is limited to a sphere that is private, thus further silencing their voices in a legal framework. Moreover, social beliefs that justify a husband's sexual rights over his wife widen the reluctance to access judicial remedy.<sup>11</sup>

Every country has different legal frameworks, including definitions, legal provisions, and penalties related to marital rape. The differences and similarities in these legal frameworks can serve as a foundation for legal development that promotes the creation of a better legal framework and advances legal progress across all countries. The process of legal development must collaborate with advancements in various fields and regulations from other countries to address legal changes.

The Criminal Code (KUHP) does not define marital rape but emphasizes the phrase "forcing" a woman who is not his wife to have sexual intercourse or copulate with him. Sexual violence regulated in the PKDRT Law means that the PKDRT Law prohibits all types of sexual violence in the household, including sexual violence that occurs between husband and wife.<sup>12</sup> Law No. 23 of 2004 on the Elimination of Domestic Violence (UU PKDRT) and Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS) classify marital rape as

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9 Yee Loon, "11,868 sexual assault cases recorded over past five year, 932 allegedly committed by family members or relatives, said K Shanmugam", *Theonlinecitizen.com*, 10 February 2023, accessed 19 September 2023, <https://www.theonlinecitizen.com/2023/02/10/11868-sexual-assault-cases-recorded-over-pastfive-year-932-allegedly-committed-by-family-members-or-relatives-said-k-shanmugam/>.

10 Rahma, S. F. M. "Legal Protection for Victims of Marital Rape from the Perspective of Indonesian Law". *Journal of Public Representative and Society Provision* 4 no. 3, (2024): 144.

11 Fatimmah Denalian and Besral. "Public Perception of Marital Rape in Yogyakarta: Study Qualitative Method". *Malang Journal of Midwifery (MAJORY)* 6 no. 2, (2024): 83-84. <https://doi.org/10.31290/majory.v6i2.4968>

12 Laely Wulandari dan Lalu Saipudin. "Marital Rape in a Comparative Perspective of Indonesian Criminal Law and Islamic Criminal Law", *UNRAM Law Review* 5 no. 1, (2021): 44, <https://doi.org/10.29303/ulrev.v5i1.139>

sexual violence within the family. The criminal penalties for perpetrators of sexual violence or abuse under the PKDRT Law and the TPKS Law have the same criminal provisions, namely a maximum of 12 years' imprisonment or a fine of up to Rp36,000,000.00 under Article 46 of the law on the Eradication of Domestic Violence and Rp300,000,000.00 under Article 6(b) of the TPKS Law. Singapore adopts the common law system, which places greater emphasis on case law. Singapore's criminal law system shares similarities with the civil law system, which is based on statutes.<sup>13</sup> However, the rape law of Singapore has been fundamentally changed by the Criminal Law Reform Act<sup>14</sup>. The 2007 amended version of the Singapore Penal Code sets limits for husbands who engage in sexual relations without their wives' consent, especially if there are marital breakdown indications<sup>15</sup>.

Since the enactment of the Criminal Law Reform Act 2019, a husband in Singapore can be found guilty of raping his wife without consent. Previously, many husbands felt immune from marital rape charges except under certain conditions, as stipulated in Section 375(4) of the Singapore Penal Code<sup>16</sup>. This immunity is subject to the Penal Code (Amendment) Act 2007, which provides an exception if the rape happens during a marital breakdown. Rape perpetrators against victims over the age of 14 in Singapore can be punished with 8 to 20 years in prison, as well as fines or caning<sup>17</sup>. Given the high incidence of marital rape, it is necessary to examine other aspects related to definitions, legal regulations, and penalties between Indonesia and Singapore, which are slightly different as outlined above.

## B. Research Method

This research uses a normative legal approach as a primary approach and a comparative approach. The normative legal approach is carried out through a review of theoretical concepts, legal principles, and legislation related to this study (literature or secondary materials).<sup>18</sup> The comparative law approach is one of the methods used in normative research to compare the laws of one country with those of another. Legal comparison is essentially a philosophical activity, thus becoming a study in comparing the intellectual concepts, whether from one or more foreign legal systems.<sup>19</sup> Based on this comparative approach, the author will compare the legal regulations on marital rape

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13 Jeffrey Pinsler SC. "Revisiting Similar Fact Evidence in Criminal and Civil Cases and Proposals for Reform", *Singapore Academy of Law Journal*, 33, (2021): 537.

14 S M Solaiman, "Physical Elements of Rape under the Core Criminal Laws of Malaysia, Singapore, Pakistan and Australia: A Comparative Review", *Journal of Law, Policy and Globalization* 132 no. 4. (2023).

15 *Chapter XVI of the Penal Code (Cap. 224, 2008 Rev. Ed.)*.

16 "Rape Laws in Singapore and How Offenders Can Be Punished", Singaporelegaladvice.com, 18 January 2021, *Online*, Internet, accessed 19 September 2023, <https://singaporelegaladvice.com/rape-laws-singapore-offenders-punished/>

17 Rahimah Rashith, "Penal Code Review Committee: Husbands May Soon Have No More Marital Immunity For Rape", *Straitstimes.com*, 9 September 2018, accessed 19 September 2023, <https://www.straitstimes.com/singapore/penal-code-review-committeehusbands-may-soon-have-no-more-marital-immunity-for-rape>.

18 Muhaimin, *Metode Penelitian Hukum*, (Mataram University Pers, 2020), 129.

19 Barda Nawawi Arief, *Perbandingan Hukum Pidana*, (Rajawali Pers, 2020), 3-4.

applied in Indonesia and Singapore.

The data were collected through library research, consisting of primary legal materials like Indonesian and Singapore regulations. Moreover, secondary legal materials by means of books, journal articles, and scholarly writings. The collected materials were analyzed using legal interpretation and a comparative approach to identify similarities and differences between Indonesian and Singaporean regulations on marital rape.

## C. Discussions

### 1. Comparison of Current Legal Regulations for Marital Rape Crimes in Indonesia and Singapore

This comparative legal study between Indonesia and Singapore is designed to identify the strengths and weaknesses of each legal system, their normative contributions, and explore ways in which these transformations can be applied. This comparative analysis is based on systematic aspects (civil law/common law), substantive aspects (definition and elements of crime), law enforcement mechanisms and support for victims, as well as factors considered essential in legal reform in this study. Mochtar Kusumaatmadja highlights the methods of law enforcement by the legislature and the judiciary (jurisprudence). For example, Indonesia has revised its national criminal law with the 2023 Criminal Code, which will come into effect in 2026, while Singapore revised its Constitution in 2022.<sup>20</sup>

There are fundamental differences in the regulations on marital rape between the two countries, where the subject and object of marital rape are examined. Indonesia itself does not differentiate between subject and object based on gender. This is the concept in the relationship between husband and wife, it can be concluded that marital rape behavior in a husband and wife relationship is something that is considered abnormal that tries to leave the values in the relationship.<sup>21</sup> This contrasts with Singapore, where men can be the subject or perpetrator, while women can be the object or victim.<sup>22</sup> This civil law system applies a top-down approach, where regulations are drafted by the government for the benefit of society and serve as the main guideline for judges. Meanwhile, Singapore, which adheres to the common law tradition with the doctrines of *stare decisis* and binding jurisprudence, has undergone significant legislative reforms, including the abolition of marital immunity for penetrative acts since 2020. Although the formation of norms in this system is often bottom-up, based on social practices that are then integrated into positive law, Singapore's criminal

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20 Lilik Mulyadi, 2017, "Teori Hukum Pembangunan dari Mochtar Kusumaatmadja", *Mahkamahagung.go.id*, 3, accessed 13 October 2023, [http://badilum.mahkamahagung.go.id/upload\\_file/img/article/doc/kajian\\_deskriptif\\_analitis\\_teor\\_i\\_hukum\\_pembangunan.pdf](http://badilum.mahkamahagung.go.id/upload_file/img/article/doc/kajian_deskriptif_analitis_teor_i_hukum_pembangunan.pdf).

21 Eva Khumairoh, et al., "Marital Rape As A Crime Of Sexual Violence In Positive Law In Indonesia", *International Journal of Law, Crime and Justice* 1 no. 2, (2024): 63. <https://doi.org/10.62951/ijlcv1i2.59>.

22 Trachel Fragma Sari, et al., "Pengaturan Tindak Pidana Perkosaan Dalam Perkawinan Menurut Hukum Pidana Indonesia Dan Hukum Pidana Singapura", *Delicti: Jurnal Hukum Pidana Dan Kriminologi* 2 no. 2, (2024): 37. <https://doi.org/10.25077/delicti.v2.i.2.p.37-46.2024>.

and family law also relies heavily on legislation. This hybrid approach makes Singapore's legal system relevant for comparative study.<sup>23</sup>

In a broader context, marital rape is defined as forced sexual intercourse without the consent of one's spouse (whether wife or husband), unwanted sexual intercourse, and sexual intercourse under threat of violence. Based on this definition of marital rape, the types of rape within marriage are categorized as involving the physical or mental unpreparedness of the wife, coercion by the husband without regard for his wife's condition, variations in sexual practices, and threats of violence that may result in injury. It is important to note that the forms and types of rape within marriage can evolve and vary over time

Violence between spouses often occurs for various reasons, including a lack of attention to this issue.<sup>24</sup> Marital rape in Indonesia is taboo to discuss because spouses have consented to sexual relations after marriage. These sexual relations are not considered rape and protected by marital rights. Based on interviews with Prof. Rika Saraswati, sexual relations require mutual consent. When there is tension between spouses or within the family, coercion or violence often occurs. Refusing to engage in sexual relations with one's spouse is acceptable, as individuals have the right to express their desires or lack thereof. Although sexual relations are a marital right, their fulfillment should be based on mutual consent, and refusals must be respected. Marital rape is an act of violence or coercion by a husband/wife against a partner who is obliged to engage in sexual activity within the marriage regardless of the partner's status.<sup>25</sup>

The legal provisions governing marital rape in Indonesia are set out in Law No. 1 of 1946 on Criminal Law (KUHP), Law No. 23 of 2004 on the Elimination of Domestic Violence (UU PKDRT), Law No. 12 of 2002 on Sexual Violence Crimes (UU TPKS), and Law No. 1 of 2023 on the Criminal Code (UU KUHP), which will come into effect in 2026. Singapore regulates marital rape provisions in the Singapore Penal Code 1871, Women's Charter (Cap. 353), and the Criminal Law Reform Act (CLRA) 2019.

The second reason for this comparison is to explore the differences in the definition of marital rape in Indonesian and Singaporean regulations. The initial focus is on the regulation of rape in Indonesia in the Criminal Code. Article 285 of the Criminal Code explains that rape occurs when a woman is threatened or forced to have sex outside of marriage. Articles 286 and 287 of the KUHP complement Article 285 by regulating situations where the woman is helpless and the victim is under 15 years old. Article 287 sets a maximum

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23 Eugene K.B. Tan dan Gary K.Y. Chan, "The Singapore Legal System", *Laws of Singapore*, (2015, 9) [https://ink.library.smu.edu.sg/sol\\_research/466/](https://ink.library.smu.edu.sg/sol_research/466/).

24 Anindya I. Devi dan Mujiono Hafidh, "The Urgency of Crime Prevention Policy to Control Rape in Marriage (Marital Rape)", *International Journal of Social Science and Human Research* 5 no 6 (2022), 2165, <https://doi.org/10.47191/ijsshr/v5-i6-21>

25 Astuti Vitria Utami Ningsih dan Syaiffudin Zuhdi "Comparative Study Of Marital Rape As A Reason For Divorce In Indonesia, Malaysia And Singapore", *International Conference Restructuring and Transforming Law* 2,1 (2023) 61.

penalty of nine years and can only prosecute upon complaint against a perpetrator who has sexual intercourse with a woman under 15 years old. Article 288 of the Criminal Code involves rape within marriage but provides limited protection if the victim is a minor. Taken together, these articles limit the definition of rape to sexual intercourse involving a woman outside of marriage with the perpetrator. These limitations are insufficient to protect victims, especially in cases of digital rape or penetration with foreign objects. Other elements, such as “committed with a woman outside of marriage,” do not reflect current developments in crime, including marital rape. These limitations make it difficult for wives to report their husbands, who instead face charges of assault with lighter penalties.

Marital rape is considered a personal matter that must be resolved internally. Indonesia has taken initial steps in preventing domestic violence by formulating it in the PKDRT Law. The PKDRT Law was specifically created to deal with cases of violence involving family members, including marital rape. The PKDRT Law was created with consideration for the right of every individual to be free from violence. However, the PKDRT Law does not provide a specific definition of marital rape. Article 8(a) of the PKDRT Law lists the forced sexual relations committed against someone living in the same household. The categorization of marital rape as a form of domestic violence in the PKDRT Law is described as an act involving coercion, intimidation, and control over the victim, with the majority of victims being wives and the perpetrators being husbands. Types of sexual violence within the household include neglecting the wife's emotional needs, sexual intercourse without consent, and forcing the wife to engage in prostitution or similar acts.

Article 2, paragraph (1) of the PKDRT Law defines “domestic sphere” as including husband, wife, children, parents, in-laws, siblings, or relatives by blood, guardianship, and domestic workers. Marital rape in the PKDRT Law, specifically in Article 53, states that law enforcement officials handle such cases based on complaints from the victim, whether the husband or wife. The term “rape” is not explicitly mentioned in this law, but sexual violence has a broad meaning, so marital rape can be classified under it. Prof. Rika Saraswati emphasizes the importance of systematic interpretation and proposes amendments to make a comprehensive PKDRT Act. Although some communities refuse to acknowledge marital rape, complaints from wives indicate the presence of sexual violence, by Article 53 of the PKDRT Act.

Law No. 12 of 2022 on Sexual Violence Crimes (TPKS Law) strengthens legal regulations related to marital rape, which were previously regulated in the PKDRT Law. The UU TPKS aims to provide a broader legal framework regarding sexual violence, particularly to protect the rights of the public, especially women. This law establishes nine types of sexual violence crimes, including those that were previously not considered crimes. Unfortunately, the provisions of Article 4(2)(h) of the TPKS Law do not clearly describe the act of marital rape and only refer to it as sexual violence within the family context. The article-by-article explanation in the law states that each section of Article 4 is deemed clear without requiring

further clarification.

Even though there is a law that recognizes sexual coercion in the household as a crime, there are still legal loopholes that define the rights and obligations of marriage. Women's rights are often not protected because they are considered a private matter<sup>26</sup>. Informal handling by authorities limits the human rights of women who report cases, creating stigma and fear for victims. The importance of ending victim blaming is also highlighted, because sexual coercion in marriage is still sexual violence, and victims should not be blamed. Victim blaming creates a negative stigma that causes many victims to choose not to report their cases.

Following developments in the law related to the issue of sexual violence in the household, particularly marital rape in Indonesia, there is a need for updates to the relevant criminal law. Current developments in criminal law focus on victim rehabilitation through a restorative justice approach that reflects the principles of swift justice, emphasis on effectiveness, efficiency, and affordability. This approach aims to rebuild the concept of modern criminal law by emphasizing a balance between the perpetrator, the victim, and society's interest. TPKS Law reflects restorative justice principle, which regulates the rights of victims, restitution and compensation, law enforcement, and rehabilitation.

The definition of marital rape is further regulated in Law Number 1 of 2023 (KUHP Law), which was passed in January 2023 and will come into effect in 2026. Marital rape in the KUHP Law is treated similarly to ordinary rape because it is considered a form of rape within the household. The difference lies in the context of rape "outside of marriage" and rape "within marriage." Although the term "marital rape" is not mentioned, Article 473, paragraph (2), of the Criminal Code refers to sexual intercourse within marriage involving the consent and trust of a lawful husband/wife. The provisions regarding marital rape in this law are reinforced by Article 473(6), which stipulates that criminal charges for marital rape can only be brought upon the victim's complaint. The existence of this complaint-based offense often allows perpetrators to escape punishment, as victims may feel threatened or consider it an internal matter, making them reluctant to report it. This provision is designed to align with Article 53 of the Domestic Violence Act, which classifies sexual violence against a spouse as a complaint-based offense.

The categorization of marital rape as a complaint offense raises concerns about the possibility of perpetrators escaping punishment. This categorization takes into account special protection for victims of sexual violence to avoid damaging the victim's dignity if the case becomes public. Prof. Rika Saraswati emphasizes the relevance of complaint offenses, given the psychological aspects of the victim and the stigma. Sexual violence as a criminal offense requires special treatment, and the victim's consent is a priority. Marital

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26 Ulfa Fitriyah, *Telaah Marital Rape Dalam Undang-Undang No. 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga (TPKDRT), dan Undang-Undang No. 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual (TPKS) Perspektif Feminisme*, Tesis: UIN Kiai Haji Achmad Siddiq Jember (2023), 76.

rape perspective arises from a husband's control over his wife's rights, which addressed through the provisions of the Criminal Code, but this does not mean that such provisions prohibit sexual relations between husband and wife; rather, they aim to prevent and protect victims from violence or coercion.

The definition of marital rape that exists and applies in Singapore's current regulations is regulated in the Singapore Penal Code 1871 (2020 Revised Edition). Article 375, paragraphs (1) and (1A), stipulates that rape is the penetration of the penis into the vagina, mouth, or anus of a person by a man. Although this section covers acts committed by men against women, Section 376(2) expands the scope of the law by regulating sexual violence or forced sexual intercourse by a woman against a man. Section 375(4) states that a man cannot be found guilty of penetration against his wife with her consent unless she is under 14 years old. Meanwhile, Article 376(2) covers sexual violence through penetration using digits (e.g., fingers) or other objects, including cases where a woman penetrates her husband without his consent.

Consent to sexual relations is significant because it relates to the violation of sexual rights. Consent is permission given by a person in a conscious state to engage in sexual activity. Consent is not valid if given under threat, while intoxicated, or under the influence of drugs. These conditions can affect the understanding of the implications of consent<sup>27</sup>. Unlike Indonesia, which categorizes marital rape as domestic violence, Singapore's Women's Charter does not explicitly recognize marital rape as a form of domestic violence. Section 64 of the Women's Charter describes domestic violence as acts of abuse or ongoing torture. Both of these acts allow victims to seek protection under Article 65 of the Women's Charter.

The third comparison lies in the criminal provisions for perpetrators of marital rape in Indonesia and Singapore. The current criminal provisions (*ius constitutum*) for perpetrators of domestic sexual violence or marital rape in Indonesia are regulated in Article 46 of the PKDRT Law, Article 6 letter b and Article 15 of the TPKS Law, and Article 473 paragraph (1) of the Criminal Code. Violations of Article 8(a) of the PKDRT Law or marital rape may be subject to the penalties under Article 46 of the PKDRT Law, which imposes a maximum prison sentence of 12 years or a fine of up to Rp36,000,000.00. Article 6(b) of the TPKS Law sets out penalties for violations of Article 4, particularly regarding marital rape, with a maximum prison sentence of 12 years and/or a fine of Rp300,000,000.00. This article protects against sexual violence in marriage, including husbands who force their wives to have sex or vice versa. The interpretation of the term "against the law" needs further explanation, especially in the context of intimate relations between husband and wife, so that there is no misinterpretation. Perpetrators who violate Article 6, especially against family members, can be subject to an additional  $\frac{1}{3}$  penalty (of the main penalty). Article 473(1) of the Criminal Code stipulates that perpetrators of marital rape who violate Article

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27 "Rape Laws in Singapore and How Offenders Can Be Punished", Singaporelegaladvice.com, 18 January 2021, accessed 26 October 2025, <https://singaporelegaladvice.com/rape-laws-singapore-offenders-punished/>.

473(2)(a) and (6) may be sentenced to a maximum of 12 years imprisonment; however, for paragraph (6), this penalty applies only if the victim reports the act of marital rape by their spouse and the perpetrator is proven guilty. Only under such conditions can criminal penalties be imposed.

Singapore uses imprisonment and fines as criminal penalties, which are divided into general criminal penalties and aggravated penalties. Caning applies as an aggravated criminal penalty. Perpetrators of rape against victims 14 years old or older in Singapore may be sentenced to up to 20 years in prison, with the possibility of additional fines or caning, by Section 375(2) and Section 376(3) of the Singapore Penal Code 1871 (Revised Edition 2020). Rape involving more serious offenses carries a sentence ranging from eight to 20 years in prison and a minimum of 12 strokes of the cane. Rape is considered serious if it involves assault or threats of violence, is committed against a victim under 14 years old without consent, or is committed against a victim under 14 years old who has an exploitative relationship with the perpetrator, even if the victim consented to the act.

Caning is considered a quick way to deter criminals. The instrument used is a long, thick rattan cane. There are more than 30 offenses, including rape, robbery, and illegal residence, that are punishable by caning. This punishment is mandatory and applies to prisoners who commit offenses in prison as an administrative measure. Regulated under the Criminal Procedure Code 2010, flogging in Singapore has a gender aspect, exempting women and men over 50 years old from imprisonment for up to 12 months. Boys under 16 years old may also be flogged, by Singapore's criminal responsibility age of 10 years.

Indonesia and Singapore have several similarities in the marital rape regulation. One of them is related to patriarchal culture (Indonesia) and marital rape immunity (Singapore). Patriarchal culture emphasizes the view that women must submit to men, considers men as symbols of leadership in social life, and has a primary influence in enhancing the dignity of women<sup>28</sup>. This culture has existed since ancient times, often placing women in a weaker position, especially in the household context. Indonesian society tends to accept the idea that a wife must serve her husband, so marital rape is considered impossible. Patriarchal culture can hinder the achievement of a happy and lasting marriage due to gender inequality, thereby triggering conflicts between husbands and wives. Although the Marriage Law emphasizes the equality of rights between husbands and wives, societal perceptions often justify violence as a means to discipline wives who refuse to fulfill their husbands' sexual desires. A shift away from patriarchal culture is necessary to ensure gender equality, particularly in cases of sexual violence, including marital rape. Prof. Rika Saraswati emphasizes the need to respect and equal treatment.

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28 Fransiska Novita Eleanora and Edy Supriyanto. "Violence against Women and Patriarkhi Culture in Indonesia". *International Journal of Multicultural and Multireligious Understanding (IJMMU)* 7, no. 9 (2020): 44-45, <http://dx.doi.org/10.18415/ijmmu.v7i9.1912>.

Criminal law reform is needed to address the issue of marital rape in Indonesia, influenced by patriarchal culture. This reform must align with restorative justice principles and emphasize victims' rehabilitation. The TPKS Law and Article 54 of the Criminal Code reflect these principles by regulating victims' rights, restitution, compensation, and consideration of forgiveness from victims<sup>29</sup>. Restorative justice methods involving mediation between victims and perpetrators do not necessarily provide justice for victims of sexual violence or rape, given the various losses and complexities involved in healing trauma. Nevertheless, efforts to resolve marital rape are beginning to emerge.

Marital rape immunity as stipulated in the Singapore Penal Code 1871 has led to an increase in cases of marital rape. Section 375 of the Singapore Penal Code 1871 (Chapter 224) states that forcing a wife to have sexual intercourse is not considered rape, except in certain situations such as sexual intercourse without consent or consent obtained through threats, or if the woman is under 13 years old or in a special condition. It is clear that this section grants legal immunity to husbands who engage in non-consensual sexual intercourse with their wives, provided the wife is over 13 years old. This indicates that Singaporean criminal law does not classify such acts as rape within the context of marriage, raising concerns about legal protection for victims of marital rape in the country.

In 2007, Singapore's senior minister of home affairs, Ho Peng Kee, brought the issue of immunity for husbands who commit marital rape to parliament. Ho Peng Kee argued that immunity would not be abolished entirely but instead proposed a new law that would provide special protection for women whose marriages were ending or had ended, indicating that they no longer consented to sexual relations with their husbands or ex-husbands<sup>30</sup>. This proposal resulted in an amendment to the provisions on marital rape in the Singapore Penal Code, which removed protection for husbands who forced sexual intercourse without their wives' consent, especially if they had been legally separated by court order or written agreement. Although this amendment was passed, some parties criticized that the protection provided was still not optimal for women in such marital situations. This amendment is regulated in the Penal Code (Amendment) Act 2007 (No. 51 of 2007), which repeals and replaces several articles in the previous Penal Code.

The provisions regarding marital rape were amended by Section 375(4) of the Singapore Penal Code (Amendment) Act 2007 by adding an exception that revokes such immunity if it is proven that the marriage is on the verge of or has already broken down. Regardless of the conditions outlined in the provisions of the section and subsection, sexual intercourse without consent within marriage is considered rape. The Singapore Parliament is currently seeking to amend the Penal Code, particularly regarding the marital rape immunity provision. In response to this, the Minister for Social Development and

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29 Henny Saida Flora, "Keadilan Restoratif pada KUHP Baru di Indonesia: Suatu Studi Hukum Profetik", *Rechtsidee* 11, (2022), no.2, 7, DOI: <https://doi.org/10.21070/jjhr.v11i0.836>

30 *Parliamentary Debates Singapore: Official Report*, vol 83 at col 2175 (22 October 2007).

Family, Mr. Tan Chuan-Jin, stated that the government is actively reviewing the clause, acknowledging that marital rape constitutes a form of sexual violence<sup>31</sup>. The statement focused on the need for equal legal protection for married women. In February 2019, the Criminal Law Reform was submitted to parliament, highlighting the end of marital immunity. The bill was subsequently passed as the Criminal Law Reform Act 2019 (Criminal Law Reform Act No. 15 of 2019), which criminalizes marital rape in Singapore and removes the previous exemption, replacing it with the provision that “(4) No man shall be guilty of an offense under subsection (1)(b) or (1A)(b) for an act of penetration against his wife with her consent.” Translation: “(4) No man shall be guilty of an offense under subsection (1)(b) or (1A)(b) for an act of penetration against his wife with her consent.”

Following the enactment of the CLRA 2019, Singapore underwent a vital transformation of reforms initiated by parliament. The CLRA 2019 amendments and the Protection from Harassment (Amendment) Act, which came into effect on January 1, 2020, led to significant changes on Singapore's Penal Code<sup>32</sup>. One of them is the removal of marital immunity for acts of rape to protect all women from sexual violence. The exception for marital rape and sexual assault has been removed by the CLRA 2019, which adds a definition of rape that also includes non-consensual acts involving penile penetration into the mouth and anus. Section 375(4) of the Singapore Penal Code 1871 (2020 Revised Edition) no longer allows the defense of marital rights.

Both Indonesia and Singapore have ratified the Convention on the Elimination of All Forms of Discrimination Against Women, demonstrating their seriousness about the issue of domestic violence. Indonesia ratified CEDAW through Law No. 7 of 1984 on the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, while Singapore did so in 1995, as evidenced by periodic country reports such as in 2007, which reformed several laws such as the Singapore Penal Code (Amendment) Act 2007 and the Women's Charter Act (2011). CEDAW emphasizes women's human rights, stating that women have the same rights as men. Both countries are also required to ensure that every woman can enjoy equal rights and freedoms. It is especially important to remember as a state party it is legally bound by CEDAW, although the Convention remains marginalised as an instrument of change within the country.<sup>33</sup>

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31 Siau Ming En, 2018, “Review of Laws on Attempted Suicide and Other Areas to be Completed This Year”, Todayonline.com. 9 January 2018, Online, accessed 26 March 2025, <https://www.todayonline.com/singapore/review-laws-attempted-suicide-and-other-areas-be-completed-year>.

32 Neo Rong Wei, 2019, “Criminal Law Reform Bill: A look at key changes in the Penal Code”, Todayonline.com, 6 Mei 2019, Online, accessed 25 Oktober 2023, <https://www.todayonline.com/singapore/criminal-law-reform-bill-look-key-changes-penal-code>.

33 Christine Chinkin and Keina Yoshida. “The CEDAW Committee: Global leader in tackling violence against women and girls”. *European Human Rights Law Review* (4), (2020): 3. Available from <https://eprints.lse.ac.uk/106594/>

Article 2(a) of DEVAW stipulates that violence against women includes various forms, such as physical violence, psychological violence within the family, sexual abuse of girls, harmful traditional practices, marital rape, and violence related to exploitation.

## **2. The Contribution of Singapore's Marital Rape Law on Rape to the Future of Indonesian's Marital Rape Law**

Singapore can make an essential contribution to Indonesia on the issue of marital rape by increasing awareness of these cases. The aim is to protect victims and deter perpetrators, as well as to change public perceptions so that forced sex within marriage is no longer visible as a trivial matter or an ordinary practice, but as a criminal act.

First, Singapore has regulations regarding the arrest of perpetrators without a warrant. Singaporean regulations classify rape as a serious crime that can be arrested without a warrant, as stated in the third column of the first schedule of the Criminal Procedure Code Singapore, in the table titled "FIRST SCHEDULE Tabular statement of offences under the Penal Code 1871." For violations of Section 375(2) of the Singapore Penal Code (2020 Revised Edition), the police may arrest a man without a warrant if they have strong reasons to believe that he has committed rape, taking into consideration factors such as the seriousness of the offense, the risk of flight, or the prevention of interference with evidence. A search of the suspect and their property conduct after arrest. Additionally, female police officers have the special right to conduct searches of arrested women under the provisions of Sections 78 and 83 of the Singapore Criminal Procedure Code.

The official warrant will be issued by a judge after finding valid grounds, ordering the arrest of the suspect, and bringing them to court. This warrant is valid until revoked by the court that issued it. This document is marked with the official seal of the court and the signature of the presiding judge. In serious crimes such as rape, bail requirements may be stricter, and the warrant may stipulate that the perpetrator cannot be released on bail. Violations of criminal acts of rape, under the Singapore Penal Code, cannot be avoided by paying bail. Singapore has also established special police units to handle sex crimes professionally. Such units also have complementing medical and psychological assistance to enable faster and better treatment of victims compared to Indonesia. Such an integrated approach demonstrates Singapore's commitment to ensure that its justice system does not only prosecute criminals but is also concerned with recovering victims and securing their safety.<sup>34</sup>

Secondly, Singapore can contribute to the protection of victims of domestic violence by encouraging the implementation of additional protection orders, as stipulated in Articles 65 and 66 of the Women's Charter. In addressing the issue of domestic violence, Singapore

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34 Sigit Kamseno and Agam Sakti Hidayat. "Perbandingan Hukum Pidana Tentang Kejahatan Kekerasan Seksual di Indonesia dan Singapura". *Jurnal Ilmu Pertahanan, Hukum, dan Ilmu Komunikasi* 1 no. 4. (2024): 413. <https://doi.org/10.62383/konsensus.v1i4.334>.

emphasizes the importance of this issue as a social issue and not merely an internal family matter. Singapore stresses the need for a swift response to the situation of victims to prevent further violence by providing additional protection for victims of domestic violence through<sup>35</sup>:

- a. Personal Protection Orders (PPO): orders prohibiting perpetrators from committing violence against victims or other family members, as stipulated in Section 65 of the Women's Charter (Cap. 353). All Singapore citizens or residents who qualify as family members may apply for a PPO from the Family Justice Courts and Family Violence Specialist Centres. The requirements are that the applicant must be over 21 years of age and legally competent. If the applicant does not meet the age or legal competence requirements, a guardian/relative may apply on their behalf. Individuals under the age of 21 who are married are also eligible. The court issues a PPO after determining that the perpetrator is likely to commit violence and that the order is necessary to protect the applicant or family members. A PPO may include a prohibition on the perpetrator inciting or aiding domestic violence. If the parties no longer live together and further communication is unlikely, the court may determine that a PPO is not necessary.
- b. Domestic Exclusion Orders (DEOs) prohibit an individual from residing in the same household. These can be submitted with a Personal Protection Order (PPO) application, as outlined in Article 65 paragraph (5) letter (a) of the Women's Charter (Cap. 353). Courts issue DEOs at the trial's conclusion, barring the perpetrator from entering all or part of the victim's or protected family members' residence. DEOs are particularly appropriate when violence persists and both parties continue to live together.
- c. An Expedited Order (EO) has a similar function to a PPO, namely to provide emergency protection when victims face imminent danger as stipulated in Section 66 of the Women's Charter (Cap. 353). An EO application can be filed along with a PPO application, and the court will consider the urgency of the application based on the situation faced by the victim. An EO is issued to the perpetrator before the PPO decision is made and remains in effect for 28 days or until the first day of the PPO hearing, with the possibility of extension by the court if deemed necessary. The issuance of an EO requires a request from the victim and the court's belief in the existence of imminent danger due to domestic violence against the victim.
- d. Mandatory Counselling Orders (CGO) Section 65(5)(b) of the Singapore Women's Charter allows the court to issue a CGO. A CGO may order the petitioner or the protected individual to attend counselling sessions at an institution designated by the Ministry of Social and Family Development. After issuance, the court reviews

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35 Low Jin Liang and Dorothy Tan, "Dealing with Family Violence", [Pkwalaw.com](https://pkwalaw.com), accessed 23 May 2025, <https://pkwalaw.com/family-violence/>.

the case every six to nine months, evaluates the progress of the parties based on the counselling institution's report, and decides whether the obligation to attend counselling is necessary.

The third contribution relates to the Family Court in Singapore, which could serve as an example for Indonesia. The Family Court in Singapore adopts the principles of therapeutic justice with a focus on maintaining healthy and constructive family relationships, even in situations of disharmony and breakdown<sup>36</sup>. The legal basis used in the Family Court is the Family Justice Act 2014 and the Family Justice Reform Bill 2023. The court structure consisted of the High Court Family Division, the Family Court, and the Juvenile Court, which aim to handle various family issues. The Family Court promotes the resolution without hostility, focusing on matters such as adoption, divorce, child custody, child and youth protection, family counseling, guardianship, international child abduction, and protection against domestic violence. This approach promotes healthier and more constructive family relationships.

The principle of therapeutic justice in family court emphasizes multifunctional services: counseling, psychotherapy, and social services, to improve individual well-being and repair relationships. Based on this concept, parties involved in a case are not merely seen as claimants of legal rights but are expected to receive justice while striving to understand the context. Family Courts in Singapore handle family disputes, including issues related to children, finances, and domestic violence, under one judicial roof. Indonesia is encouraged to adopt a similar model so that family issues are not solely dependent on religious or general courts, and to synchronize the relevant laws. To effectively address these issues, the UU PKDRT requires strengthening and broader application. Professor Rika Saraswati further underscores the importance of refining the Marriage Act, alongside the crucial need for increased public understanding of their rights.

The final contribution concerns consent in sexual relations (sexual consent), which emphasizes the importance of communication and voluntary consent. Any action taken without consent constitutes a violation of a person's right to privacy and sexual freedom. The Singapore Penal Code, although it does not define consent, outlines several situations that are considered unlawful. Such invalid consent includes consent given under threat or misunderstanding, as stipulated in Section 90 of the Singapore Penal Code (Revised Edition 2020). Regulations on sexual consent in Indonesia are not yet specific, as the TPKS Law does not include the concept of sexual consent. The TPKS Law only explains sexual consent regarding sexual violence and how a person cannot freely give consent due to power and/or gender inequality. In this law, the concept is a degrading and coercive act that can cause physical, psychological, and other forms of suffering. Unfortunately, the law

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36 Dorothy Tan, "Therapeutic Justice - A New Approach to Divorce in Singapore", Pkwlaw.com, accessed 19 June 2025, <https://pkwalaw.com/therapeutic-justice-divorce/>.

does not yet contain specific provisions regarding consent in the context of sexual relations. Both countries have defined consent or sexual consent in their legal regulations, as such a definition is crucial for understanding what is meant by consent in sexual relations and to what extent such actions can be considered consent or not.

#### **D. Conclusion**

Marital rape is the act of forcing sexual intercourse within marriage without the consent of the spouse. The differences in the legal regulation of marital rape between Indonesia and Singapore currently lie in the legal system, legal subjects and objects, definitions, and criminal penalties, including the use of caning in Singapore. Both countries share similarities in patriarchal culture (Indonesia) and marital rape immunity (Singapore), which have led to a lack of criminal regulations on the matter. Both have ratified CEDAW and interpret marital rape as domestic violence, protecting victims through the PKDRT Law and TPKS Law (Indonesia) and the Women's Charter (Singapore). A change in public perspective is needed so that society recognizes marital rape as a criminal act. Both countries are advised to establish more specific regulations or supplement existing regulations on marital rape. Singapore is expected to seek more humane alternatives to caning in the future, while still adhering to human rights principles. Singapore, as a member of the United Nations, should comply with and respect the human rights standards outlined in the United Nations Charter, the Universal Declaration of Human Rights (UDHR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations Convention Against Torture).

Singapore can contribute to Indonesia's future regulations by guiding the arrest of rapists without a warrant, based on Singapore's Criminal Procedure Code. Second, there is additional protection for victims of domestic violence through PPO, DEO, EO, and CGO protection orders. Third, there are regulations on situations that do not consider consent in Singapore's Criminal Code. Fourth, the existence of the Singapore Family Court, which in particular handles family matters, including domestic violence cases. Indonesia's legal regulations could consider addressing situations involving consent. Both countries could also consider incorporating definitions and boundaries of consent into the law. The hope is that Indonesia could establish a family court like Singapore's, specifically handling domestic violence and rape cases.

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## Curriculum Vitae of Author

**Elizabeth Vania Angkawidjaja, S.H** holds a Bachelor of Law degree from Soegijapranata Catholic University and is currently pursuing her Master of Notarial Studies at Diponegoro University. She is a dedicated legal professional who upholds integrity, professional ethics, and justice. With a solid foundation of legal knowledge and a strong understanding of legal and regulatory principles, Elizabeth is determined to make a meaningful contribution to the legal system, with a focus on service and professionalism.

**Emilia Metta Karunia Wijaya, S.H., M.H** completed my undergraduate studies at Atma Jaya Yogyakarta University and further pursued her Master's degree at Gadjah Mada University. Currently, I work as a Lecturer at Soegijapranata Catholic University. Her professional background is rooted in academia, contributing to legal education and research. My scientific contributions and manuscripts, accessible via my Google Scholar profile (<https://scholar.google.com/citations?hl=en&user=864cQWYAAAAJ>), cover various legal topics.