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A Comparative Criminal Law Analysis of Sexual Violence within Domestic Contexts: Perspectives from Indonesia and Malaysia

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ABSTRACT

This research addresses domestic sexual violence as a hidden crime where victims choose not to report due to family disgrace concerns, causing high dark numbers. The study employs a normative legal research methodology, utilizing various legal materials including laws, court decisions, and legal theories through comparative and statutory approaches to analyze Indonesian and Malaysian criminal law frameworks. The research reveals that Malaysian law classifies sanctions for domestic sexual violence suspects based on victim categorization, whereas Indonesian law lacks such classification systems for sanctions against suspects based on their victims. However, Indonesia explicitly regulates who is protected by law and applies much more severe sanctions against domestic sexual violence perpetrators compared to Malaysian criminal law. The findings demonstrate that based on joint punishment theory, sanctions applied to domestic sexual violence perpetrators must serve dual purposes as deterrent and deterrence effects, intended to prevent perpetrators and potential offenders from repeating such crimes. This comparative analysis contributes novel insights into the differential approaches between Indonesian and Malaysian legal systems in addressing domestic sexual violence, highlighting Indonesia's more comprehensive punitive framework while identifying Malaysia's victim-based classification system as a distinctive feature in determining appropriate sanctions for domestic sexual violence cases.

Keywords: *Combined Punishment Theory, Marital Rape, Normative Research Method*

INTRODUCTION

Marriage is ideally intended to bring mutual happiness between spouses—not only for the husband or wife individually, but for both parties equally. However, in practice, marriage can also become a source of suffering for one party, whether the husband or the wife. When mutual happiness is not achieved, conflict may arise within the household. Empirical evidence shows that domestic violence often affects the more vulnerable partner. Law No. 23 of 2004 concerning the Elimination of Domestic Violence in Indonesia outlines the elements that constitute domestic abuse. Article 5 of this statute prohibits acts of violence within the family environment, specifying the following forms of abuse:

1. Physical violence;
2. Psychological or emotional violence;
3. Sexual violence;
4. Neglect within the household.

Notably, domestic violence is not limited to physical abuse. Sexual violence within the family remains a critical and often underreported phenomenon. Its social and psychological consequences are severe and long-lasting. Marital rape, for example, occurs when a wife is subjected to sexual coercion or violence by her spouse within the confines of a legally recognized marriage. Such acts, though occurring in private spheres, are criminal in nature and demand urgent legal and institutional attention to protect victims and uphold human dignity.

In reality, physical violence is not the only prevalent form of abuse within society; sexual violence has also emerged as a critical and pressing issue, given the profound and far-reaching impact such crimes have on victims. One particularly concerning form of sexual violence is marital rape, wherein a wife becomes the victim of sexual coercion or assault perpetrated by her own spouse within the bounds of marriage.

Marital rape can be defined as an act involving the use of force, intimidation, or coercion by a husband to engage in sexual activity with his wife, without due regard to her physical or emotional condition or consent.¹ In Indonesia, the concept of domestic violence, including marital rape, is addressed under Law No. 23 of 2004 on the Elimination of Domestic Violence (UU PKDRT). Specifically, Article 8—classified under Article 5(c)—includes the following as forms of sexual violence:

1. Coercion to engage in sexual acts directed at individuals residing within the domestic sphere;

¹ Aldila Arumita Sari and R B Sularto, “Kebijakan Formulasi Kekerasan Seksual Terhadap Istri (Marital Rape) Berbasis Keadilan Gender Di Indonesia,” *Jurnal Pembangunan Hukum Indonesia* 1, no. 1 (January 29, 2019): 117, <https://doi.org/10.14710/jphi.v1i1.117-127>.

2. Coercion of sexual relations between a household member and another person, for purposes of trafficking and/or other specific objectives.

This phenomenon has become increasingly prevalent in Indonesia, necessitating a more active role from the public in reporting criminal acts, particularly those involving domestic sexual violence. Such offenses are frequently classified as *hidden crimes*, as both the perpetrators and victims often choose to conceal the acts from public scrutiny.² This tendency is further reinforced by prevailing socio-cultural norms, particularly the traditional ideology of “jaga praja”—the preservation of family honor—which discourages the disclosure of internal family matters. In Javanese culture, for instance, revealing family disgrace is perceived as equivalent to exposing one's own personal shame. These cultural constraints contribute significantly to the high incidence of unreported cases—referred to as the *dark number*—which hinders effective law enforcement and victim protection.³

Such incidents are not limited to Indonesia but are also increasingly prevalent in neighboring countries such as Malaysia, where cases of sexual violence within the domestic sphere continue to rise. As a response, the Malaysian government has assumed a central role in addressing domestic violence, recognizing the urgent need for comprehensive legal protection. This is evidenced by the enactment of the *Domestic Violence Act 1994* (Act 521), which is specifically designed to safeguard individuals who fall victim to violence within the household. While this act provides a framework for victim protection, perpetrators are subject to criminal liability under the *Malaysian Penal Code* (Act 574), commonly referred to as the *Kanun Keseksaan*. Accordingly, Act 521 must be read in conjunction with the Penal Code, as clarified in Section 3A of the *Domestic Violence Act*, which explicitly states that this legislation must be interpreted alongside the provisions of the Penal Code to ensure a comprehensive legal response to domestic violence in Malaysia.

Section 2 of the *Domestic Violence Act 1994* (Act 521) defines domestic violence to encompass various forms, including physical abuse, psychological abuse, sexual abuse, destruction of property, and the use of substances that impair the victim's consciousness.⁴ The concept of rape, including marital rape, is further addressed under the *Penal Code of Malaysia* (Act 574). A man may be deemed to have committed rape if sexual intercourse occurs under any of the following circumstances:

1. In the absence of the woman's consent;
2. Where no genuine agreement exists between the parties;

²Safitri Wikan N S and A. (Andrianus) Gunawan, “Urgensi RUU Penghapusan Kekerasan Seksual (RUU Pks) Terhadap Kekerasan Dalam Rumah Tangga,” *Pahlawan* 17, no. 2 (October 31, 2021): 128–39, <https://www.neliti.com/id/publications/554592/>.

³Mien Rukmini, *Aspek Hukum Pidana Dan Kriminologi* (Bandung: Refika Aditama, 2006).

⁴*Domestic Violence Act 1994 (Act 521) & Akta Keganasan Rumah Tangga 1994 (Akta 521)*, 1994.

3. Where the act arises from misunderstanding or fear experienced by the victim;
4. Where consent is obtained through deception or abuse of trust;
5. Where the victim lacks the mental capacity to comprehend the nature of the act; or
6. Where the victim is a minor, regardless of whether consent was expressed.

This provision is stipulated under Section 375 of the Penal Code of Malaysia (Act 574). Although the term *marital rape* is not explicitly mentioned in the legislation, Section 375A of the Penal Code imposes criminal liability on perpetrators. The provision states that “any man who, during the subsistence of a valid marriage, causes hurt or fear of death or causes injury to his wife or any other person in order to compel her to engage in sexual intercourse with him, shall be punished with imprisonment for a term not exceeding five years.”⁵

This research aims to provide a comparative legal analysis of the differences between Indonesian and Malaysian criminal laws concerning sexual violence within the domestic sphere. It also seeks to promote a deeper understanding of the legal provisions governing sexual offenses committed in familial settings under the respective jurisdictions.

Sexual Violence within the Domestic Sphere

The general public often associates domestic violence exclusively with physical abuse. However, under the relevant legislation on the elimination of domestic violence, such violence is defined more broadly as any act committed by a person, typically against a woman, that results in physical, psychological, emotional suffering, sexual violence, or family neglect.⁶ This includes threats, coercion, or the deprivation of autonomy within the household. The evolving legal framework surrounding sexual violence within the family, particularly marital rape, remains a focal point of governmental concern in both Indonesia and Malaysia, primarily due to prevailing societal assumptions that such acts are unlikely to occur within their own families.

In practice, however, sexual violence within the family—including marital rape—is a recurring issue. Such acts are often accompanied by emotional and physical coercion, compelling victims, typically wives, to submit to sexual demands under duress. In Indonesia, marital rape is addressed under Law No. 23 of 2004 on the Elimination of Domestic Violence, particularly Article 5(c), which defines sexual violence in the domestic setting to include:

⁵ *Kanun Keseksaan 574 Atau Malaysia Penal Code* (Malaysia), accessed July 17, 2025, <https://www.sprm.gov.my/admin/files/sprm/assets/pdf/penguatkuasaan/kanun-keseksaan-bm.pdf>.

⁶ “UU No. 23 Tahun 2004,” accessed July 17, 2025, <https://peraturan.bpk.go.id/Details/40597/uu-no-23-tahun-2004>.

1. Coercion to engage in sexual intercourse with another member of the household;
2. Coercion to perform sexual acts with another person within the family setting for the purpose of trade or other specific objectives.⁷

Under Malaysian national legislation, marital rape is addressed through Section 375 of the Penal Code (Act 574), which sets out specific conditions under which a man may be considered to have committed rape. The provision stipulates that sexual intercourse is deemed to constitute rape if it occurs:

1. Without the consent of the woman;
2. Not based on mutual agreement;
3. As a result of misunderstanding or fear experienced by the woman;
4. As a result of distorted or manipulative trust;
5. When the victim lacks the capacity to understand the nature of the act;
6. When the victim is a minor, regardless of whether consent was given.

Although the specific term “marital rape” is not expressly stated in statutory language, Section 375A of the Penal Code provides penal sanctions for such conduct. This provision reads: “Any man who during the subsistence of a valid marriage causes hurt or fear of death or harm to his wife or any other person in order to compel her to engage in sexual intercourse shall be liable to imprisonment for a term not exceeding five years.” This legal framework illustrates Malaysia’s attempt to criminalize coerced sexual acts within marriage, thereby expanding the interpretation of sexual violence to include circumstances where consent is obtained through intimidation or harm within a domestic relationship.⁸

Victims of Sexual Violence within the Family Environment

A “victim” refers to an individual who suffers from acts of violence or threats thereof within the context of a family or household. The victim serves as the object of criminal acts involving sexual violence in domestic settings, as stipulated in Article 2(1) of the Indonesian Law No. 23 of 2004 on the Elimination of Domestic Violence (UU PKDRT), which defines the domestic sphere as comprising individuals who reside under the same roof, including:

1. A husband, wife, and child;
2. Individuals related by blood, marriage, breastfeeding, guardianship, or custodianship, who cohabit with the nuclear family as described in point (a);
3. Domestic workers who reside in the same household and are employed within the family unit.

⁷“UU No. 23 Tahun 2004.”

⁸ *Kanun Keseksaan (Akta 574)* (Selangor Darul Ehsan : International Law Book Services (ILBS), 2005).

In comparison, the Domestic Violence Act 1994 (Act 521) of Malaysia similarly provides protections for victims, as defined under Section 2 of the Act. Protected persons include a spouse (legally or de facto), former spouse, children, and any adult who, due to mental or physical impairment, illness, or old age, is considered vulnerable. Other family members residing in the same household are also covered under this definition.

LITERATURE REVIEW

Theory of Comparative Law

The theory of comparative law seeks to identify and analyze the differences and similarities between legal systems in order to provide a comprehensive explanation of how law functions in practice and to explore potential juridical solutions, including the non-legal factors that influence the law's application. Van Apeldoorn emphasizes that scientific comparative legal analysis requires historical comparison of earlier legal systems as part of its methodological foundation.⁹ The purposes of the theory of comparative law, particularly from a theoretical perspective, include:

1. Generating new legal knowledge through the systematic study of foreign legal systems;
2. Serving an educational function in legal scholarship and pedagogy;
3. Functioning as an auxiliary tool for other legal disciplines to improve legal reasoning and normative development.

Penal Theory

Penal theory refers to the framework for imposing and administering punishment upon individuals who have committed criminal offenses as stipulated by criminal law. This theory is generally categorized into three main schools: the absolute theory, the relative (or utilitarian) theory, and the combined theory.

The absolute theory posits that punishment serves as a moral retribution for a wrongful act, emphasizing that justice is achieved by exacting punishment proportionate to the offense committed. In contrast, the relative theory, also known as the utilitarian theory, views punishment as a means to achieve beneficial outcomes—namely, crime prevention and the protection of society. This theory emphasizes the deterrent and reformative purposes of penal sanctions.

The combined theory integrates elements from both the absolute and relative schools of thought. It acknowledges that punishment not only serves retributive justice but also plays a vital role in ensuring public safety and social order. According to Sholehuddin, the objectives of penalization are threefold: first, to provide a deterrent effect—both general and specific—so as to prevent the

⁹Djaja S Meliala, *Hukum Di Amerika Serikat : Suatu Studi Perbandingan Ringkas* (Bandung: TARSITO BANDUNG, 1977).

recurrence of similar criminal conduct; second, to function as a mechanism for offender rehabilitation; and third, to foster the moral education of the offender. Through the penal process, offenders are expected to develop an awareness of their wrongdoing and to reintegrate into society with an improved moral compass.¹⁰

RESEARCH METHODOLOGY

In this research formulation, the study adopts a normative legal research method, which involves the process of identifying legal norms, principles, and doctrines relevant to resolving legal issues—particularly those relating to the Malaysian context.¹¹ Normative legal research relies on legal materials such as statutes, court decisions, and scholarly legal theories as its primary sources of legal data.¹²¹³

Accordingly, the comparative approach is applied in this study, which entails examining and contrasting the legal systems of two different jurisdictions—Malaysia and Indonesia. Additionally, the statutory (legislative) approach is employed to focus the analysis on the study, interpretation, and evaluation of positive legal norms in both Malaysia and Indonesia, particularly in relation to the regulation of sexual violence within the domestic sphere.¹⁴

RESULT AND DISCUSSION

Legal Regulation of Sexual Violence Within the Domestic Sphere: A Criminal Law Perspective from Indonesia and Malaysia

Marital rape refers to an act of coercion or abuse committed by a husband or wife—against the other spouse—to engage in sexual activity without due regard for the physical or psychological condition of the victimized partner.¹⁵ In Indonesian legislation, particularly Law No. 23 of 2004 on the Elimination of Domestic Violence, sexual violence within the domestic environment is clearly categorized as a form of abuse. Article 1 of the law defines domestic violence as any act

¹⁰ M Sholehuddin, *Sistem Sanksi Dalam Hukum Pidana : Ide Dasar Double Track System & Implementasinya* / M. Sholehuddin | Perpustakaan Mahkamah Konstitusi (Jakarta: Radja Grafindo Persada, 2003).

¹¹ Tunggul Ansari Setia Negara, “Normative Legal Research in Indonesia: Its Originis and Approaches,” *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (February 2, 2023): 1–9, <https://doi.org/10.22219/aclj.v4i1.24855>.

¹² Moh. Mujibur Rohman et al., “Methodological Reasoning Finds Law Using Normative Studies (Theory, Approach and Analysis of Legal Materials),” *MAQASIDI: Jurnal Syariah Dan Hukum*, December 27, 2024, 204–21, <https://doi.org/10.47498/maqasidi.v4i2.3379>.

¹³ “Legal Research Methods in Legal Problem Solving,” ADCO Law, March 7, 2022, <https://adcolaw.com/blog/legal-research-methods-in-legal-problem-solving/>.

¹⁴ Dr. Jonaedi Efendi and Prof. Dr. Prasetyo Rijadi, *Metode Penelitian Hukum Normatif Dan Empiris*, Kedua (KENCANA, 2016), https://books.google.co.id/books?id=j1W6EAAAQBAJ&printsec=frontcover&hl=id&source=gbs_atb#v=onepage&q&f=false.

¹⁵ Sari and Sularto, “Kebijakan Formulasi Kekerasan Seksual Terhadap Istri (Marital Rape) Berbasis Keadilan Gender Di Indonesia.”

committed against a person—especially a woman—that results in physical, psychological, or sexual suffering and/or neglect of the household, including threats, coercion, or unlawful deprivation of liberty within the familial relationship.¹⁶

Further clarification is provided under Article 8 in conjunction with Article 5(c), which explicitly prohibits the coercion of a family member residing within the domestic unit to engage in sexual activity. Specifically, Article 8(a) refers to “forced sexual intercourse,” denoting any sexual engagement executed under duress, whether through verbal intimidation or physical violence, and without the free and informed consent of the victim. This aligns with the provisions of Law No. 12 of 2022 on the Elimination of Sexual Violence, which also regulates acts of sexual violence within family settings, as stated in Article 4(2)(h).

In the Malaysian legal framework, domestic sexual violence is regulated under the Domestic Violence Act 1994 (Act 521). Article 2 of this Act defines domestic violence as any act committed knowingly or intentionally to instill fear of physical harm, to inflict physical injury, to engage in coercive sexual conduct, or to compel the victim—through threats or intimidation—to participate in sexual or other behaviors from which the victim has the right to abstain. This also includes unlawful confinement, destruction of property with the intent to exert psychological pressure, and other abusive behaviors. Such provisions aim to safeguard victims—primarily women—within the family unit from acts of physical and sexual aggression that undermine their autonomy, dignity, and legal rights.¹⁷

Therefore, domestic violence is defined as one or more of the acts outlined in subsections (a) to (h) of Section 2 of the *Domestic Violence Act 1994* (Act 521), committed against a spouse, former spouse, child, dependent adult, or any other family member. In contemporary interpretation, domestic violence encompasses a broad range of abuses, including physical, psychological, emotional, sexual, financial abuse, and violations of the victim’s dignity.¹⁸ In addition, the Malaysian *Penal Code* also governs sexual violence within the family, particularly under Sections 375 and 375A, which provide for sanctions against the perpetrators.

There are notable similarities between the legal regulation of sexual violence within the family under Indonesian and Malaysian law, especially concerning intimate partner violence. First, both legal systems provide similar classifications of victims. In Indonesia, Article 2 of Law No. 23 of 2004 on the Elimination of Domestic Violence stipulates that victims include any individual residing within the same household. Likewise, in Malaysia, the same classification is found under Section 2 of the Domestic Violence Act 1994 (Act 521). Second, both jurisdictions

¹⁶ “UU No. 23 Tahun 2004.”

¹⁷ *Domestic Violence Act 1994 (Act 521) & Akta Keganasan Rumah Tangga 1994 (Akta 521)*.

¹⁸ Mohd Safri Mohammed Na’aim, Ramalingam Rajamanickam, and Rohaida Nordin, “Intimate Partner Violence within the Framework of Malaysian Laws,” *UUM Journal of Legal Studies* 13, no. 1 (January 31, 2022), <https://e-journal.uum.edu.my/index.php/uumjls/article/view/12335>.

do not provide a specific classification or gradation of sexual abuse within the domestic sphere that would indicate aggravating or mitigating circumstances.

However, significant differences remain. First, with regard to the number of legal provisions: Indonesian law includes only one main provision addressing sexual violence in the domestic context, whereas Malaysian law incorporates two—one within Act 521 (Section 2(c)), which defines sexual coercion within domestic settings, and the other under Section 375A of the Penal Code, which stipulates criminal penalties. Second, in terms of legal conceptualization, Indonesia codifies the notion of domestic sexual violence under Article 8 of Law No. 23 of 2004, while Malaysia addresses it in Section 375A of the Penal Code and Section 2(c) of the Domestic Violence Act 1994.

Application of Criminal Sanctions Against Perpetrators of Sexual Violence Within the Family in the Perspective of Indonesian and Malaysian Criminal Law

The regulation of criminal acts, particularly those related to sexual violence within the family, is established through substantive criminal provisions.¹⁹ In Indonesia, the principal sanctions are codified under Article 10 of the *Indonesian Penal Code (Kitab Undang-Undang Hukum Pidana / KUHP)*, which categorizes penalties as follows:

1. Principal Punishments:
 - a. Capital punishment
 - b. Imprisonment
 - c. Confinement
 - d. Fines
2. Additional Punishments:
 - a. Revocation of certain rights
 - b. Forfeiture of specified goods
 - c. Public announcement of court judgments

Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT) stipulates that criminal sanctions may be imposed on perpetrators of sexual violence within the family sphere. The regulation outlines both principal and additional penalties. The principal penalties are specified in Articles 46, 47, and 48, while additional penalties are regulated under Article 50.

In Malaysia, criminal sanctions imposed on perpetrators of sexual violence in the domestic setting are limited to principal penalties, without supplementary sanctions being expressly regulated. These principal penalties are codified under

¹⁹Muhammad Fathony Rizky Noorizain, Fachrizal Afandi, and Prija Djatmika, "Basic Considerations of Judges in Imposing Criminal Code Article 81 Paragraph 2 of the Child Protection Law Against Children Who Have Sexual Intercourse on the Basis of Consent," *International Journal Of Humanities Education and Social Sciences (IJHESS)* 3, no. 3 (December 27, 2023), <https://doi.org/10.55227/ijhess.v3i3.716>.

Sections 375A, 375B, and 376 of the Malaysian Penal Code (Act 574). The application of sanctions under Act 574 depends significantly on the identity of the victim. For instance, Section 375A provides that a husband who commits physical violence to the extent that his wife fears for her life may be subject to imprisonment for up to five years.

The Similarities in the Application of Criminal Sanctions for Perpetrators of Domestic Sexual Violence in Indonesian and Malaysian Legal Systems:

A primary similarity in the imposition of criminal sanctions for perpetrators of domestic sexual violence in both Indonesia and Malaysia lies in the formulation of punishment provisions.²⁰ In Indonesia, these are consolidated under *Law No. 23 of 2004 on the Elimination of Domestic Violence*, whereas in Malaysia, similar provisions are found in both the *Domestic Violence Act 1994 (Act 521)* and the *Penal Code of Malaysia (Act 574)*. Both legal systems adopt a framework wherein the maximum penalty of imprisonment serves as the dominant punitive model.²¹

The Differences in the Application of Criminal Sanctions for Perpetrators of Domestic Sexual Violence in Indonesia and Malaysia:

The differences in sanction enforcement between Indonesia and Malaysia are multifaceted. First, in terms of the number of statutory provisions, Indonesian law regulates domestic sexual violence explicitly in three articles—Articles 46, 47, and 48 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence. In contrast, Malaysian law addresses this offense explicitly in a single provision, Article 375A of the Malaysian Penal Code (Act 574), with alternative charges potentially applicable under Articles 375B and 376.

Second, the types of punishment imposed also vary. In Indonesia, the primary sanctions include imprisonment and fines, accompanied by additional penalties such as movement restrictions imposed on the perpetrator and rehabilitation programs for victims, as stipulated in Article 50 of the same law. Conversely, in Malaysia, the primary punishments consist of imprisonment and caning, with the severity of punishment contingent on the identity of the victim. The supplementary measures in Malaysia are limited primarily to victim rehabilitation programs, without any formally regulated ancillary sanctions imposed upon the perpetrator.

Third, the system of criminal formulation differs significantly between the two jurisdictions. Indonesia adopts an alternative sentencing system, in which judges may choose between various types of sanctions. In contrast, Malaysia applies a cumulative sentencing system, whereby multiple punishments—such as imprisonment and caning—may be imposed concurrently for a single offense.

²⁰ Faiha Oktrina, “A COMPARATIVE STUDY OF VICTIM PROTECTION ON THE DOMESTIC VIOLENCE ACCORDING TO LAW IN INDONESIA AND MALAYSIA,” *Jurnal Ilmiah Kutei* 22, no. 1 (June 28, 2023): 48–60, <https://doi.org/10.33369/jkutei.v22i1.27626>.

²¹ Yichen Pan, “Comparative Analysis on the Improvement of Aggravate Punishment for Recidivism in Malaysia,” *West Science Law and Human Rights* 1, no. 04 (October 30, 2023): 240–52, <https://doi.org/10.58812/wslhr.v1i04.196>.

Fourth, regarding the severity of penalties, Indonesia imposes a maximum prison sentence of twenty years and/or a maximum fine of IDR 500 million. Meanwhile, Malaysia prescribes a maximum imprisonment of twenty years along with caning, depending on the identity of the victim and the nature of the offense.

Fifth, the classification of criminal offenses differs: in Indonesia, domestic sexual violence is considered a relative complaint offense (*delik aduan relatif*)—legal proceedings require a report or complaint from the victim or a related party. In contrast, under Malaysian law, it is treated as an absolute complaint offense (*delik aduan absolut*), meaning prosecution can proceed without any formal complaint from the victim.

The comparative analysis reveals that while both Indonesian and Malaysian legal frameworks acknowledge domestic sexual violence as a serious criminal offense, their approaches to victim protection and perpetrator accountability differ substantially in scope and implementation. Indonesia's comprehensive legislative framework under Law No. 23 of 2004 demonstrates a more holistic approach by incorporating both punitive measures and rehabilitative elements, including victim rehabilitation programs and movement restrictions on perpetrators as additional sanctions. This multifaceted approach aligns with contemporary victim-centered justice models that emphasize not only punishment but also restoration and prevention of recidivism.^{22,23} Conversely, Malaysia's regulatory framework, while incorporating physical punishment through caning, appears more traditionally punitive in nature, focusing primarily on deterrence through severity of punishment rather than comprehensive victim support and perpetrator rehabilitation.

The differential treatment of complaint requirements between the two jurisdictions highlights contrasting philosophical approaches to prosecutorial discretion and victim autonomy in domestic sexual violence cases.²⁴ Indonesia's classification of domestic sexual violence as a relative complaint offense (*delik aduan relatif*) places significant emphasis on victim agency and choice in pursuing legal remedies, potentially respecting the complex dynamics within family relationships where victims may face additional pressure or retaliation.²⁵ However, this approach may inadvertently contribute to the perpetuation of high dark figure statistics, as victims who are intimidated or culturally constrained from reporting

²² Saurabh Singla, "Reforming Criminal Justice: Evaluating the Efficacy of Restorative Justice Practices in Reducing Recidivism Rates," *Indian Journal of Law* 2, no. 2 (April 30, 2024): 32–35, <https://doi.org/10.36676/ijl.v2.i2.08>.

²³ Aad Ghali, "Reforming Criminal Justice: Evaluating the Impact of Restorative Justice Practices on Recidivism Rates," *Utu Journal of Legal Studies (UJLS)* 1, no. 1 (June 30, 2024): 1–9, <https://doi.org/10.57238/ujls.mxdg73a78>.

²⁴ Bethany Backes et al., "Prosecutorial Use of Victim Video Statements in Domestic Violence Cases," *Crime & Delinquency* 68, no. 9 (August 22, 2022): 1492–1515, <https://doi.org/10.1177/00111287211047540>.

²⁵ Ioana M. Crivatu et al., "Types of Domestic Violence and Abuse-Flagged Offenses and Their Associations: A Quantitative Exploration Using English Police Data," *Criminal Justice and Behavior*, June 10, 2025, <https://doi.org/10.1177/00938548251343816>.

may never access justice. Malaysia's treatment of these offenses as absolute complaint offenses (*delik aduan absolut*) reflects a state-centered approach that prioritizes public interest over individual victim choice, potentially enabling more aggressive prosecution but possibly disregarding victim preferences and family dynamics that may complicate legal proceedings.

The structural differences in sentencing systems between Indonesia's alternative sentencing model and Malaysia's cumulative punishment framework demonstrate divergent penological philosophies regarding proportionality and deterrence in domestic sexual violence cases. Indonesia's alternative system provides judicial flexibility in tailoring sanctions to specific circumstances, allowing judges to consider factors such as victim impact, perpetrator characteristics, and potential for rehabilitation when determining appropriate penalties. This discretionary approach may better serve the individualized nature of domestic violence cases, where one-size-fits-all solutions often prove inadequate.²⁶ Malaysia's cumulative sentencing approach, combining imprisonment with corporal punishment, reflects a more rigid but potentially more predictable deterrent model that may send stronger societal messages about the gravity of domestic sexual violence. However, the effectiveness of these different approaches in achieving the dual objectives of deterrence and victim protection requires empirical evaluation to determine which framework better serves the joint punishment theory's goals of preventing recidivism while adequately addressing victim needs and societal expectations for justice.

CONCLUSION

The regulation and imposition of criminal sanctions for acts of sexual violence within the family environment in both Indonesia and Malaysia exhibit both similarities and differences. In terms of similarities, neither jurisdiction classifies sexual violence in the domestic sphere with aggravating circumstances, and both share commonalities in the categorization of victims, the formulation of criminal sanctions, and the general pattern of custodial sentencing. However, several notable differences remain, including the number of statutory provisions governing the concept of sexual violence within the family, the conceptual framing of such violence, the number of penal provisions, the types of punishments prescribed, the system of sentencing formulation (alternative in Indonesia and cumulative in Malaysia), the severity of sentencing, and the nature of the offense classification—whether it is treated as a relative or absolute complaint offense.

This research confirms that Malaysian law classifies sanctions for domestic sexual violence suspects based on victim categorization, whereas Indonesian law

²⁶Daniel Muir, Cristiana Orlando, and Becci Newton, "Impact of Summer Programmes on the Outcomes of Disadvantaged or 'at Risk' Young People: A Systematic Review," *Campbell Systematic Reviews* 20, no. 2 (June 13, 2024), <https://doi.org/10.1002/cl2.1406>.

lacks such classification systems for sanctions against suspects based on their victims. However, Indonesia explicitly regulates who is protected by law and applies much more severe sanctions against domestic sexual violence perpetrators compared to Malaysian criminal law. From the perspective of joint punishment theory, Indonesia's comprehensive sanctioning framework, which includes both principal and additional punishments such as victim rehabilitation and perpetrator movement restrictions, demonstrates superior capacity to achieve deterrent and deterrence effects. The alternative sentencing system in Indonesia allows judicial flexibility to tailor sanctions according to specific case circumstances, while Malaysia's cumulative punishment system with corporal punishment reflects a more traditional approach that may serve deterrent purposes but lacks the rehabilitative elements necessary for comprehensive crime prevention.

The findings reveal that domestic sexual violence remains a hidden crime where victims choose not to report due to family disgrace concerns, contributing to high dark numbers in both jurisdictions. Indonesia's classification of domestic sexual violence as a relative complaint offense exacerbates this underreporting problem, as it places the burden of initiation on victims who face cultural stigma and family honor concerns. Malaysia's absolute complaint offense classification enables more proactive prosecution but may not adequately address the underlying factors that prevent victims from seeking help. Based on joint punishment theory, effective sanctions must serve dual purposes as deterrent and deterrence effects to prevent perpetrators and potential offenders from repeating such crimes. Therefore, both jurisdictions would benefit from legal reforms that address the hidden nature of domestic sexual violence while strengthening their respective sanctioning frameworks to better achieve the objectives of deterrence, victim protection, and crime prevention.

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