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Table of Content

A Road to the Recognition of Home-Workers: Transformation of POS Production Modes and Roles of Home-workers in Batik Industry in Central Java: Case Study in Cluster Batik in Central Java
   Arianti Ina R. Hunga 1

Working and Organizing as Women’s Groups: Reflection on the Struggle of Pro-Women Policy Advocacy in Indonesia, 1998 – 2017
   Elizabeth Kristi Poerwandari, Ratna Batara Munti, & Jackie Viemilawati 21

Sexual Violence in The Framework of Criminal Law (Comparative Study of Laws against Rape)
   Andria Luhur Prakoso & Kuswardani 39

Against Ahok: An Analysis of Emotion-Driven Movements and Network Power in Jakarta’s 2017 Gubernatorial Election
   Subekti W. Priyadharma 53

Women’s Circle Approach is An Alternative Path for Gender Responsive Public Procurement System in Indonesia
   Sartiah Yusran, Eliyanti Agus Mokodompit, & Ulfa Matoka 69
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Sexual Violence in The Framework of Criminal Law
(Comparative Study of Laws against Rape)

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ABSTRACT

Crime or violence directed against women is distinct from crime in general. The characteristics of the crime include women victims, their acts against women's rights, and causing harm in the form of physical, psychological, and/or sexual. A year after Indonesia’s independence, this crime against women was regulated along with other crimes in the Criminal Code (Penal Code) through Act No. 1946. 1 on the Rule of Criminal Law, but not by using a special title with a woman's name. Accordingly, the Criminal Code, which according to history is a Dutch colonial heritage, needs to be reformed to become a better Criminal Code. This paper tries to explain the regulation of violence against women in the form of criminal acts of rape in various countries namely Malaysia, India and the Netherlands. This study is normative legal research with a comparative approach. The author will compare the substance of criminal law in the three Criminal Codes. In doing the comparison, the author focuses on the object of criminal law review, especially on the side of the act and penal sanctions.

Based on the study descriptions of several foreign Criminal Codes (Malaysia, India, and the Netherlands), there are several different things in the rape arrangements in the Criminal Codes. The difference is that in Malaysia and India, the Criminal Code does not distinguish between rape (rape) and cabul (lewd). Only the arrangement is formulated with intercourse with consent. The types of rape in India and Malaysia are more varied than the Dutch, both in terms of the act, the aspect of the perpetrator and the victim aspect. Nevertheless, the Indonesian Criminal Code is simpler than the Dutch Criminal Code. Malaysian Criminal Code has the most serious penal sanction compared to the other foreign countries (India and the Netherlands) and Indonesia. The study of these three different laws in these three countries can open our eyes to reformulate the rape which is more extensively formulated from the aspects of the actions and aspects of the victims with reference from the foreign Criminal Code, and this simple study can be an input of legal material to be processed in accordance with the Nation's values Indonesia.

KEYWORDS: sexual violence, criminal law, comparative study
INTRODUCTION

Crime is always present in people’s lives whether it is in a light or heavy form. The notion of crime varies according to the point of view. For example, from the sociological perspective, crime is the deviant behavior of the norms of society. This notion will be different from that of the legal perspective, while in general crime is defined as unlawful. Richard Quiney states that crime is a definition of human conduct that is created by authorized agents in a politically organized society. So an act can be regarded as a crime when formulated by power in the rule of law. This is in accordance with principle legality which is a fundamental principle in national criminal law that is popularly known as “nullum delictum nulla poena sine lege praevia poenali.” This principle is defined in Article 1 paragraph (1) of the Criminal Code as follows:

“No act shall be punished by virtue of a prior statutory penal provision”.

This principle indicates that (1) the applicable criminal law is a written criminal law; (2) the criminal law must be prior to its action or the criminal law should not be retroactive; (3) prohibition of using analogy interpretation. J.E. Sahetapy said that in the principle of legality there are several things that must be a foothold in the enforcement of criminal law (meaning penatal law hope) namely:

A. Cannot be criminally charged except under criminal provisions by law
B. There is no application of criminal law by analogy
C. Cannot be punished only by habit
D. There should be no unclear formulation of offense (lex certa condition)
E. There is no receding power from the criminal provisions
F. There are no other crimes except those determined by law.

The term of violence against women is normatively born after the UN Declaration of December 20, 1993, namely Declaration on the Elimination of Violence against Women, stated that:

"Violence against women means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life “

Thus, crime or violence directed against women is distinctively distinct from crime in general. The characteristics of the crime include women victims, their acts against women’s rights, and causing harm in the form of physical, psychological, and/or sexual.

This crime against women one year after independent Indonesia has been regulated along with other crimes in the Criminal Code (Penal
Sexual Violence in The Framework of Criminal Law …
(Prakoso & Kuswardani)

Code) through Act No. 1946. 1 on the Rule of Criminal Law, but not by using a special title with a woman’s name that is stipulated in crimes against decency such as Articles 285, 286 etc. Nevertheless, as the evolution of the crime society develops, as an illustration can be known with the development of technology, the crime also developed with the emergence of cybercrime. Crimes against women also developed with the movement - the movement of women who fight for their rights, so that the crime is not only as regulated in the Criminal Code but there are behaviors that are criminalized into crime because it is a violation of the rights of women as human beings, in a criminal law Outside the Criminal Code as the birth of Law No. 23 of 2004 on Elimination of Domestic Violence.

Accordingly, the Criminal Code, which according to history is a Dutch colonial heritage, needs to be reformed by means of reform to become a better Criminal Code. Because the first, the basic idea of the establishment of the Criminal Code is not based on the philosophical values of the Indonesian Nation, even at the time of nationalization with the 1946 Act. 1 on the Penal Code has been made adjustments by eliminating or by adding / inserting certain articles such as Article 135, 136 of the Criminal Code is deleted, then inserting Article 136 a. Secondly, that the original Dutch Criminal Code does not have an official translation published by the government, which there is a translation of experts, which by the government the translation has not been formally established. Thirdly, this colonial Criminal Code was created decades ago, which today the society has grown and its crime has developed too, even in the Netherlands itself has undergone a change. It is therefore natural that there should be a revision of the Criminal Code in respect of its substance, especially those related to crimes against women in the form of rape, which with the renewal of this rape arrangement, women will be better protected its rights especially sexual rights which also affiliated with the right of reproduction. This paper will try to explain the regulation of violence against women in the form of criminal acts of rape in various countries namely Malaysia, India and the Netherlands.

The selection of these countries is based on the reason that, firstly, the selection of the State of Malaysia, from (1) the geographical aspect that Malaysia is adjacent to Indonesia, so it is commonly referred to as neighboring countries. (2) from the legal aspect (a) of its constitution (Malaysian Law Institutional Guild)5 in Part I of the States, Religions and Laws of the Guild in Case 3 (1) it is stated that Islam is the religion of the Guild but other religions may be practiced by Safe and peaceful in which the alliance shares, and in fact in Malaysia live various religions such as in Indonesia, but in Malaysia does not apply Islamic law and penal law; (B) the criminal law principle applicable to criminal detention is similar to that of a person being punished for the power of the law

and one shall not be prosecuted twice in the same case (nebis in idem - Indonesian Article 76 of the Criminal Code); (C) the legal system that Malaysia and Indonesia have unequal legal systems, Malaysia is the Anglo Saxon legal system and Indonesia is a Civil law system, because the two countries have a different history. However, in this era of globalization such a separation is now not so extreme because of the rapid flow of communication that makes the world without boundaries, so the law moves.

India's State selections, with the first reason from the legal aspect that (a) India more or less three years ago ratified the Anti-Rape Act with the aim of tackling the crime of rape and of protecting women; (B) The country has a legal system similar to that of Malaysia, but because of the globalization of the law it moves. Secondly, the historical aspect - with the teachings of Satyagraha by Mahatma Gandhi sourced from Bhagavad gita which greatly respects human rights. The reason for the selection of the Dutch State has been stated above that the Indonesian Criminal Code is a colonial legacy with adaptation.

This study is a normative legal research with comparative approach, in which the law is conceptualized as a law - the Indonesian Criminal Code, Malaysia, India and the Netherlands. The point is that the author will compare the substance of criminal law in the three Criminal Codes. The author in doing the comparison by focusing on the object of criminal law review, especially on the side of the act and penal sanctions.

The first step of this research, the classification of deeds and criminal sanctions for the act of rape from the Criminal Codes of three countries (Malaysia, India and the Netherlands). Second, compare the rape arrangement of the three foreign Criminal Codes with Indonesian Penal Code from the aspect of the criminal act and sanction. Third, drawing conclusions on the similarities and differences in regulation (actions and sanctions) of rape even though two countries (India and Malaysia) use different legal systems which from this side would be recommended for input of legal substance in reforming national criminal law in order to provide protection for women.

The comparative law (penal) referred to in this paper is more of a method, so the foothold in this study is based on the foundations of criminal law, which in this criminal law there are several principles that constitute the object of criminal law study namely (1) principle of legality; (2) principle of conduct; (3) principle of culpability; (4) principle of personal liability. But not all of these principles are the object of study in this paper, this paper will only focus on the principle of legality and principle of conduct, both of which are fundamental principles. Legality principle is the legal base for an act to be punished, so that the deed must be formulated in a law - a prohibited act, in which the formulation of this action will appropriate with sanctions.

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to be imposed on the prohibited act, which by principle of legality above must be formulated as well.

Therefore, to examine the problem of rape in various Criminal Code of foreign countries it will be seen the concept of rape and formulation of existing rape. While the conduct principle which is the objective element, which according to Gabriel Hallevy\(^8\) can be classified into two namely prohibited actions and criminal sanctions.

This theory, although based on above principle, is developed by Feminist critique in George P. Fletcher\(^9\). They said that it is noteworthy the act of rape having risks to the rights of women, so that there are needs for sanctions that pay attention to the interests of victims.

Based on the above theory, these are the concept of rape, forms of rape and criminal sanctions against every form of rape in various Foreign and National Criminal Code as follows:

**THE MALAYSIAN CRIMINAL CODE\(^{10}\)**

**THE CONCEPT OF RAPE**

It is stipulated in Section 375 which extends Section 375 A and 375 B, of which Section 375 is for everyone, whereas for Section 375 A it is reserved for husbands who engage in sexual relations with wives, which causes the wife to fear death, or illness or Harming a wife or having someone else get in touch with a wife can be criminally charged. Section 375 B is a rape perpetrated by a gang (group).

**SECTION 375**

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

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

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

SECTION 375 A

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

SECTION 375 B

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

Therefore, rape is the sexual relationship of a man and a woman against the will of women or without the consent of women or with the consent of women because (1) women are in a state of fear; (2) women believe that the man will marry legally; (3) women cannot understand the consequences of the consent given because of the mind / drug interference; (4) if the woman is under the age of 16 years.

TYPE OF RAPE

Based on the arrangement in that article means rape can be seen from three aspects. First, from action aspect can be classified into:

1. Sexual intercourse against the wishes of women;
2. Sexual intercourse without female consent;
3. Sexual intercourse with the consent of women but consent is given in a state of fear or misunderstanding;
4. Sexual intercourse with the consent of women for believing women will be married;
5. Sexual intercourse with the consent of women but women cannot understand the consequences of consent (due to mental disability/emotional disturbance or physical disability);
6. Sexual intercourse with the consent of women, whose consent is granted because of a professional relationship or for the exercise of authority;
7. Sexual intercourse with or without the consent of women whose woman is not yet 16 years of age;
8. Sexual intercourse with pregnant women, this is set out in Section 376 Second, from the aspect of the perpetrator, then the types of rape include:

1. Rape committed by male individuals;
2. Rape committed by group / gang;
3. Rape committed by the husband.

Third, from the side of the victim, types of rape include:

1. Rape with female adult victims;
2. Rape with child victims;
3. Rape with the victim’s wife.

PENAL SANCTIONS AGAINST RAPE

The penalty of criminal act of rape is set out in Section 376, that the penalty imposed for rape is imprisonment and whipping, except that the rape committed by the husband to his wife as stipulated in
Article 375 A is only a maximum of five years in prison. The amendment of Section 376 in 2013 with the Act of 2013, does not change the sentence to be lighter or less than five years, the change only changes the formulation of the duration of punishment by formulated intervals of length of sentence of not less than five years and not more than 20 years.

Penalties for rape committed by groups / gangs, each responsible and sentenced to not less than 10 years imprisonment and not more than 30 years.

INDIAN CRIMINAL CODE
THE RAPE CONCEPT

Rape in the Indian Criminal Code is set forth in Article 375 whose formulation of the article is the same as Article 375 of the Malaysian Criminal Code, before there was a change on November 28, 2014. However, after the change there is a difference with the formulation of expanded penetration not only the penis penetrating the vagina but also the other (Mouth, urethra or female anus). Another distinction, Indian law does not regulate rape by husbands against wives except for two things: first, the sexual intercourse committed by husbands against wives under the age of 18, is regulated by Article 375 sixth. Second, the sexual intercourse of a husband against his wife for which there has been a decision of separation without her consent, is regulated by Article 376 A.

SECTION 375

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

First.- Against her will.
Secondly.- Without her consent.
Thirdly.- With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
Fourthly.- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
Fifthly.- With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
Sixthly.- With or without her consent, when she is under sixteen years of age.

Explanation.-Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Seventhly.—When she is unable to communicate consent. (result of 2014 amendment)

Exception.-Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

SECTION 376 A - Intercourse by a man with his wife during separation

Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be
punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

So rape is a sexual act committed by every man either with his penis or other objects that can penetrate the vagina, urethra or anus of a woman against the will of a woman or without the consent of a woman or with the consent of a woman because (1) the woman is afraid; (2) women believe that the man will marry legally; (3) women cannot understand the consequences of the consent given because of the mind disorder / drug interference; (4) if the woman is under the age of 16; (5) when she is unable to submit her consent.

TYPE OF RAPE

Since Article 375 of the Indian Criminal Code is similar to Article 375 of the Malaysian Criminal Code, the type of rape seen from the action aspect is similar to the type of rape from the action aspect regulated in the Malaysian Criminal Code.

However, the type of rape from the aspect of the perpetrator in the Indian Criminal Code is set more detailed than the Malaysian Criminal Code, so the classification is as follows:

1. Rape with male perpetrators is generally regulated in Article 375;
2. Rape with a husband who has separated from his wife, is in Article 376 A;
3. Rape which is done by civil servants, subject to Article 376 B;
4. Rape which is done by a prison employee, subject to Article 376 C;
5. Rape which is done by hospital personnel (manager or staff), subject to Article 376D;
6. Rape which is done by group or gang actors, regulated by Section 376.
7. Rape which is done by police, regulated by Section 376.

From the aspect of the victim then the rape can be categorized as follows:

1. Rape with female adult victims;
2. Rape with girl victims;
3. Rape with a separated wife as the victim;
4. Rape with the employee as victim (employment relationship);
5. Rape with female detention as victims;
6. Rape with victims of hospital patients or women residing in the hospital setting;

CRIMINAL SANCTIONS

Criminal sanctions for rape committed to perpetrators of rape are set forth in Sections 376, 376 A up to 376 D. Article 376 is a section regulating criminal sanctions against rape committed by any person without certain qualifications, the imprisonment imposed is not less Of seven years and may be renewed ten years or lifetime unless there are certain reasons which according to the court may be accepted / allowed and contained in the verdict imprisoned for less than 7 years and fined. While the act of rape committed by a certain qualified person is regulated in Article 376 A up to Article 376 D. The criminal sanctions formulated in these articles are cumulative not alternative i.e. in the form of imprisonment and fine.
Prison sentences for acts of rape which is done by police, gang, civil servants and prison officials, respectively set forth in Article 376 paragraph (2) letter a, letter g, prescribe criminal sanctions not less than ten years, unless there is a particular reason that the court may be admitted / authorized and published in its verdict in the form of imprisonment of less than 10 years and a fine.

Article 376 A, provides for the punishment of a husband who has lived separately from his wife having sexual intercourse without her consent sentenced to two years in jail and a fine. Article 376 B provides that penalties for rape committed by certain qualified persons ((civil servants who works in prison) with female detention as victim, sentences of five years in prison and penalties. Article 376 C establishes criminal sanctions against rape committed by managers, prison supervisor is sentenced to no more than five years in jail and a fine. For hospital managers and staff are sentenced to no more than five years and a fine.

**DUTCH CRIMINAL CODE**

**THE RAPE CONCEPT**

The Dutch Criminal Code in regulating sexual intercourse/sexual penetration is differentiated between rape and lewd acts, but for both countries (Malaysia and India) there is no distinction between sexual penetration both with consent and without consent falling into the category of rape. Therefore, in the Netherlands / Netherland / Dutch, there are articles regulating rape and fornication (lewd) separately, for offenses set forth in Articles 245 to 248 and 248 a through Article 248 e, whereas rape is regulated in Articles 242 to With Article 244 as follows:

**SECTION 242**

*Any person who engages in acts comprising or including sexual penetration of the body with a person whom he knows to be unconscious, to have diminished consciousness or to be physically unable to resist, or to be suffering from such a degree of mental disease or defect that such person is incapable or not sufficiently capable of exercising or expressing his will in the matter or of offering resistance, shall be liable to a term of imprisonment not exceeding eight years or a fine of the fifth category.*

**SECTION 243**

*Any person who engages in acts comprising or including sexual penetration of the body with a person whom he knows to be unconscious, to have diminished consciousness or to be physically unable to resist, or to be suffering from such a degree of mental disease or defect that such person is incapable or not sufficiently capable of exercising or expressing his will in the matter or of offering resistance, shall be liable to a term of imprisonment not exceeding eight years or a fine of the fifth category.*

**SECTION 244**

*Any person who engages in acts comprising or including sexual penetration of the body with a person who is under the age of twelve years, shall be liable to a term of imprisonment not exceeding twelve years or a fine of the fifth category.*

Based on what is written of the articles of the Criminal Code above, then according to the author, the
Concept of rape is an act of violence or threat of violence or other threat to force a person (female) to conduct sexual penetration, the act includes addressed to a person suffering from mental illness or physical disability, Conscious or reduced consciousness or to women who are not yet twelve years old.

**Type of Rape**

The Dutch Criminal Code regulate rape simply, so the type of deeds that can be categorized as violence is also simpler, so that it can be said that rape is seen from the aspect of his actions must contain elements of violence or the threat of violence or coercion in sexual penetration. However, if viewed from the aspect of the victim is:

1. Rape with adult and healthy female victims, subject to Section 242;
2. Rape with adult female casualties but mentally disabled, subject to Article 243;
3. Rape with female adult victim missing or lacking in consciousness, regulated in Article 243;
4. Rape with female adult victims but physically disabled, governed by Article 243;
5. Rape with child victims, provided for in Article 244.

Acts of rape seen from the aspect of the perpetrator; it can be distinguished:

1. Rape committed by individuals in the sense of the individual;
2. Rape by groups or gangs; and
3. Rape committed by parents / family / people who are taking care or watching.

**Criminal Sanctions**

Penalties for rape that may be imposed on the perpetrators stipulated in the article are also not separate as in the Malaysian and Indian Criminal Code. The type of punishment imposed is an alternative prison or with a fine, the method of formulation using the maximum limit (no more), which according to Section 242 and 244 not more than 12 years and fines of the fifth category, which according to section 23 is the second highest (The fifth category, € 67,000 [Note editor: As from 1 January 2012: € 78,000.]). However, for sexual penetration committed against women suffering from disability or disappearance or lack of awareness of the punishment imposed is as set out in Section 243 i.e. no more than eight years or fines of the fifth category.

Subsequently it is also stated in Section 248 that the imprisonment can be increased / increased by one third if (1) the action is committed by a group / gang (two or more persons); (2) the parents / family or the person authorized to take care or supervise the child.

**Indonesian Criminal Code**

**The Rape Concept**

Indonesian Criminal Code in regulating sexual intercourse which is a prohibited act and can be criminalized or in other words referred to as a crime similar to the Dutch Criminal Code is distinguished between lewd acts and rape. However, in the Dutch Criminal Code there are still arrangements if the act of rape is done more than one person/gang or
done by the parents/family or addressed to a disability woman. Indonesian Criminal Code does not regulate it, so it is simpler. However, for such acts are addressed to persons under the age of 18 years, then applicable Law no. 23 of 2002 on Child Protection which has been amended by Law no. 35 of 2014 on Amendment of Law no. 23 of 2002 on Child Protection. Rape in the Criminal Code is only stipulated in one article namely Article 285 as follows:

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

Based on the article, rape shall mean the act of intercourse accompanied by violence or threat of violence or coercion by men to women.

**TYPE OF RAPE**

Based on Article 285 of the Criminal Code, the type of rape there is only one type either from the aspect of the act, the perpetrator or the victim, because in that article is not regulated on the condition of the victim, the number of perpetrators except only regulated on how to commit the act of violence or threat of violence or coercion. Is the main element of an act can be called as rape, because without this element then the sexual relationship will be classified into obscene acts that have different arrangements and elements / elements - elements of his actions.

**CRIMINAL SANCTIONS**

Criminal sanctions against rape in accordance with Article 285 formulation of a single that is in the form of imprisonment with a maximum period of 12 years. In relation to the formulation of the act it is also singular meaning there is no additional formulation if it is done by the group or against a disability woman, then the generalization of the formula used only one Article 285 with criminal sanctions not more than 12 years.

**RAPE IN FACT**

Violence against women, especially the type of sexual violence that occurs in public/community areas is still high. Data collected by the National Commission of Women in 2016, there are 1036 cases, these are reported cases, there are still many cases that are not reported so that they are not revealed, as revealed by Lentera Sintas Indonesia that approximately 90 per cent of cases of rape are not reported to parties. So that this criminological perspective is true that crime is like an iceberg phenomenon. The reason they do not report is usually related to the culture of their society, that is, shame

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culture so that the event is regarded as a disgrace cannot understand that it is a legal event. Even in the online media is said cases of sexual violence against women that can be categorized as rape is still adorn online media among others

a. Liputan6.com, Bengkulu\textsuperscript{13} reported first, that there is a woman who was raped by four men in front of her husband. Second, rape of female mental disorders.

b. Liputan6.com, Kupang\textsuperscript{14}, that in Kupang, precisely in Kampong Ende, Aiemere Timur Village, Aiemere Sub-district, Ngada District, East Nusa Tenggara, there have been rape by two men against a grandmother with initials LK suffering from mental disorder, which begins with the persecution first.

c. Liputan6.com, Cianjur, that two men who approached a female who ride motorcycle with SIR initials that passed in Kampung Babakan Karet, Cianjur, West Java by means of pointing clurit and knife to the rider, so that the rider was shocked and fainted, and in a state The two men immediately raped SIR alternately, and after being raped abandoned the motorcycle was taken away.

d. Liputan6.com, Pekanbaru\textsuperscript{15}, that the ER 15-year-old girl was raped by a gang (5 people) known as the Bandot group, in the bush Dei Abang Market, Bangkinang Barat District, Riau on the way back to school.

Based to the above facts is only a small portion of sexual acts directed against rape-specific to women, there are still many online media outlets that report cases of rape both with individual actors alone or in groups.

Criminal law is expected to provide protection to the community (women), especially in the case of rape, there are still some deficiencies that need to reform the substance, so as to provide justice expected by women victims of rape, given that the purpose of criminal law protect the interests of individuals, And the interests of the state, in which according to Hans Kelsen\textsuperscript{16}, it is the right.

Furthermore, that the rape was a violation of women's rights. Feminist existensialism\textsuperscript{17} states that women are "other", meaning that women are different from men, where women's rights are different from men's rights, besides women's rights are also human rights, in which rights are the natural rights granted by God Almighty. Indonesia as a constitutional state one of the consequences is to provide


protection against human rights regardless of gender. Therefore, women's rights called women's reproductive rights must also be protected by the state.

**CONCLUSION**

Based on the study descriptions of several foreign Criminal Code (Malaysia, India, and the Netherlands) there are several different things in the rape arrangements in the Criminal Codes. The difference is that in Malaysia and India Criminal Code is not distinguished between rape (rape) and *Cabul* (lewd), only the arrangement is formulated with intercourse with consent. Rape and lewd in Dutch and Indonesian having different formulation of the Criminal Code - so that the concept/understanding of rape and obscenity (lewd acts) is different. Rape is sexual intercourse preceded by violence or threat of violence or coercion, while obscene acts have no coercion or violence. However, there is a difference in the formulation of husband-wife rape in the Malaysian Criminal Code with India, which in Malaysia is that sexual intercourse of husbands against sick wife or fear of death can be punished, for India to be regarded as rape if they have legally divorced. The Dutch Penal Code and the Indonesian Criminal Code distinguish the formulation of rape and lewd acts.

Therefore, the types of rape in India and Malaysia are more varied than the Dutch, both in terms of the act, the aspect of the perpetrator and the victim aspect. Nevertheless, the Indonesian Criminal Code is simpler than the Dutch Criminal Code, because in the Dutch Penal Code there are still formulations with rape with victims of disability, as well as rape committed by groups/gangs as the Malaysian and Indian Criminal Code. Whereas in Indonesian Criminal Code does not exist.

Malaysian Criminal Code have the most serious penal sanction compare to the other foreign countries (India and Netherland) and Indonesia, because the perpetrators are imprisoned and caning whilst the rape of the husband except the wife is only a prison sentence. In India the punishment for this act of rape is also cumulative as in Malaysia but not cumulative with whipping but with fine. Indonesian Criminal Code, criminal sanction is formulated solely in the form of imprisonment, whereas in the Netherlands the formulation of sanctions is alternative.

The study of these three different law in these three countries can open our eyes to reformulate the rape which is more extensively formulated from the aspects of the actions and aspects of the victims with reference from the foreign Criminal Code, and this simple study can be an input of legal material to be processed in accordance with the Nation's values Indonesia.

By considering the facts as described above, although only a few but this illustrates that rape is not only committed by an individual but also by the group and the victims are not only healthy women but also women who suffer from mental disorders or physical disabilities. It is therefore necessary to reformulate rape by gang groups as well as rape with victims of physically or physically disabled women.
REFERENCES


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SALASIKA etymologically derived from Javanese language meaning ‘brave woman’. SALASIKA JOURNAL (SJ) is founded in July 2019 as an international open access, scholarly, peer-reviewed, interdisciplinary journal publishing theoretically innovative and methodologically diverse research in the fields of gender studies, sexualities and feminism. Our conception of both theory and method is broad and encompassing, and we welcome contributions from scholars around the world.

SJ is inspired by the need to put into visibility the Indonesian and South East Asian women to ensure a dissemination of knowledge to a wider general audience.

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