

ALSA CONFERENCE 2024

ALSA INDONESIA SEMINAR MATERIAL SET

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National Chapter	: Indonesia, South Korea, Brunei
Chamber topic	: Resolving the conflicts between environmental sustainable practices and economic growth

1. Introduction

The complex challenge faced by policymakers in diverse countries such as Brunei, Indonesia, and South Korea involves reconciling environmental sustainability and economic growth. Striking the right balance between these crucial aspects is imperative for these nations. This paper aims to explore the stances of Brunei, Indonesia, and South Korea from both legal and cultural perspectives regarding the conflicts between environmental sustainability and economic growth. Our surroundings, encompassing the sun, land, plants, air, and water, create the natural ecosystem crucial for continuous energy and materials supporting our existence. While the environment is fundamental for a thriving economy, it is vital to recognize its significance for future generations. Consequently, considerations about economic advancement must include a commitment to the well-being of generations yet to come.

2. Country's stance from legal and cultural perspective

In Brunei, the comparison between environmental sustainability and economic growth has been a topic of considerable debate. The legal stance involves having the policies in place to promote environmental sustainability, while the cultural perspective emphasises the importance of addressing

community concerns and ensuring that economic growth aligns with the preservation of the environment. The challenge lies in finding a balance that respects cultural values, supports economic development, and ensures the long-term health of the environment. In the context of insufficient budget, Brunei addressed that funds are crucial for financing environmental expenditures. Without adequate resources, to enforce control measures and regulations becomes challenging. Aside from that, the challenge arising from the local community's perception of sustainability practices is that it might be a potential threat to the local economies. This suggests a need for cultural sensitivity and understanding to bridge the gap between traditional economic activities and sustainable practices. From the Indonesian perspective, addressing environmental challenges involves a multifaceted consideration of mechanisms, enforcement, budgetary constraints, compliance, and enforcement issues. The insufficiency of the budget adds complexity, as environmental protection funds are essential for financing necessary expenditures, risking resource scarcity and hindering pollution control enforcement. Compliance and enforcement issues, deeply rooted in the local community's perceptions of environmental law, present a significant hurdle, with sustainability practices often viewed as threatening local economies. Additionally, evaluating the effectiveness of environmental policies, and considering socioeconomic implications, is vital. Indonesia's holistic environmental management approach integrates strategies for enhancing community and economic resilience to environmental disasters and climate-related events, as well as promoting sustainable agricultural practices. This approach aligns with the concept of sustainable development mandated in the Preamble of the 1945 Constitution, echoing international agreements emphasizing the consideration of environmental dimensions in decision-making. The Fiscal Policy Agency (BKF) is actively developing, evaluating, and implementing fiscal policies and funding instruments to

contribute to Indonesia's comprehensive response to climate change, following the Climate Change Issues & Fiscal Policy Initiative of 2009.

Korea has established K-SDGs to contribute to the achievement of the common goals of the international community and to solve various problems in Korean society. Among them, the goal to achieve both environmental protection and economic development is 'healthy and safe water management, eco-friendly production and consumption of energy, climate change and response, marine ecosystem conservation, and terrestrial ecosystem conservation'. Korea is moving from a growth-oriented society to an advanced society that pursues quality of life, health, and happiness. Accordingly, the Ministry of Environment is also working to advance the environmental system not only for the current generation but also for the future generation and the unspeakable plants and animals with the aim of "environmental welfare that completes people's happiness" by analyzing the various environmental needs of the people. Specifically, it is actively participating in global efforts to ensure that the reduction goals declared to the international community are well maintained, and it is also working on establishing a foundation to promote the virtuous cycle of resources and energy (ex. Act on Promotion of Transition to a Circular Economy and Society, Act on Integrated Management of Environmental Pollution Facilities).

3. Proposed solutions regarding the issues arose

To navigate the conflicts between environmental sustainability and economic growth in these countries, an adaptable approach is essential. The following are some solutions regarding the issues that arose, although these might not accommodate all the countries. There is a need for policy review and enhancement, to address the existing policies' lack of effectiveness and the

failure to address the emerging challenges adequately, so that it aligns with the evolving environmental concerns. Another matter is due to limited technological integration in monitoring environmental compliance, investing in advanced technologies for monitoring and surveillance is needed, to enhance real-time assessment and enforcement capabilities. Developing long-term financial plans for environmental protection is important to ensure sustainable funding and provide stability and allows for better management of resources. To resolve the issue with regards to community involvement and education in environmental enforcement, there is a need to establish community-led environmental initiatives and educational programs. This can help foster a sense of shared responsibility for environmental stewardship. In some cases, there is a limited collaboration between governmental agencies and non-governmental organisations. Hence, it is encouraged to facilitate partnerships between government bodies, NGOs, and private sectors to leverage collective resources and expertise in environmental protection.

4. Conclusion

In conclusion, the challenge faced by policymakers in Brunei, Indonesia, and South Korea involves harmonizing environmental sustainability with economic growth. Each country grapples with unique circumstances, yet the need for balance is imperative. Brunei has shown commitment to environmental considerations but must reassess and strengthen existing policies. Indonesia faces multifaceted challenges, including budgetary constraints, community perceptions, and the imperative to bridge the gap between the community and climate change. South Korea, aligning with global sustainability goals, emphasizes eco-friendly practices and climate change response. To address these challenges, proposed solutions include policy review and enhancement, technological integration for monitoring, community-led initiatives, educational programs, and fostering collaborations

between government, NGOs, and the private sector. Navigating the complexities requires adaptability and a shared commitment to balancing environmental sustainability and economic growth.

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Chamber topic : Resolving The Conflicts Between Environmental Sustainable Practices and Economic Growth

Introduction

Recognizing the inherent interdependence of environmental sustainability and economic growth, international and national legal frameworks should promote their harmonious coexistence. Sustainability, far from being an impediment to progress, presents a fertile ground for new business opportunities. The burgeoning field of clean technologies exemplifies this, offering solutions for renewable energy, sustainable waste management, and resource efficiency. Economic growth, fueled by these innovations, can in turn contribute to environmental protection through investments in research and development for air pollution control, carbon capture technologies, and other environmental solutions.¹

Mechanisms

- 1) The enforcement of environmental sustainability in Brunei Darussalam is legally highlighted in the use of the Environmental Protection and Management Order Cap. 240.² Such implementation is emphasised in Section 7 of the aforementioned Act which affirmed that every person in Brunei Darussalam has a duty to responsibly manage and protect the environment. However, this provision is weakened by the imprecise language used in Section 8 of the same Act which stated that any person acting in contradiction with the Act is deemed guilty of an

¹ Cohen, S. (2020, January 27). Economic Growth and Environmental Sustainability. State of the Planet; Columbia Climate School.
<https://news.climate.columbia.edu/2020/01/27/economic-growth-environmental-sustainability/>

² (No date) Brunei Darussalam Government Gazette Environmental Protection and ... Available at: https://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2016/EN/S063.pdf (Accessed: 26 January 2024)

offence. The ambiguous nature of this provision lies in the fact that the punishment for such a contravention is not specifically stated. A solid step forward into a stronger mechanism would be to use a more accurate and clear language.

- 2) Brunei's economy is heavily reliant on the oil and gas sector, which accounts for over half of the country's gross domestic product (GDP). However, the oil and gas industry also leaves several types of problems, including contaminated soil, production waste, and operating waste.³ Furthermore, it becomes significantly more problematic to implement environmental laws onto the people where a country relies on environmental exploitation.
- 3) Under Brunei Darussalam National Council on Climate Change, among one of the 10 strategies that are being implemented is increasing awareness and education surrounding mitigation and adaptation responses against climate change.⁴ It can be achieved by extending the knowledge to curriculum and co-curriculum programmes, effective communication and promotion for the public and socialisation of this policy for the economic sector among these.

Regulations

Current regulations in Brunei Darussalam are;

- 1) Environmental Protection and Management Order Cap. 240, Section 7: "It shall be the duty of every person in Brunei Darussalam to take, as far as is reasonably practicable, such measures to ensure the protection and management of the environment and the prevention, reduction, or control of any potential hazard that may cause pollution or damage to the environment." Accordingly, this Regulation establishes a general environmental duty that compels individuals to take reasonably practised actions to protect and

³ Lee, S. H. F., Cunningham, A., Gharif, R., Koh, D., Lai, L., Petra, D. H., Wong, J., & Yussof, S. R. (2020). Brunei Darussalam: country report on children's environmental health. *Reviews on Environmental Health*, 35(1), 15–25. <https://doi.org/10.1515/reveh-2019-0081>

⁴ Brunei Darussalam National Council on Climate Change. (n.d.). Brunei Darussalam National Climate Change Policy. <https://climatechange.gov.bn/SitePages/Pages/Home.aspx>

manage the environment.

- 2) Safety, Health and Environment National Authority Cap. 227, Section 3: “There is hereby established a body to be known as the Safety, Health and Environment National Authority which shall be a body corporate with perpetual succession and a common seal and shall, by that name...” The provision within this Chapter demonstrates that there is an authority in charge of the environmental protection of Brunei Darussalam.
- 3) Brunei Darussalam National Council on Climate Change has put into place several strategies aims to address environmental protection, these are industrial emissions, forest covers, electric vehicles, renewable energy, power management, carbon management, waste management, climate resilience adaptation, carbon inventory & education and education, all encapsulated in the Brunei Darussalam National Climate Change Policy.

Proposed Solution

- 1) Expanding Non-Oil Exports: Legal frameworks will be revamped to encourage the export of goods and services beyond oil and gas. This stimulates economic growth by creating new avenues for international trade and revenue generation.
- 2) Strengthening enforcement mechanism: The existence of the Environment Protection and Management Order Cap. 240 is a start to a more environmentally sustainable nation, however, its implementation and the awareness of the people regarding its existence require a firmer approach.
- 3) Cultivating Sustainable Businesses: Environmental consciousness is woven into the legal fabric, promoting green business practices through regulations and incentives. This fosters long-term economic health by ensuring environmental sustainability alongside traditional metrics. An example of this can be seen in the project conducted by SCOT in collaboration with Green Xchange where low-income earners of a community may participate in

exchanging recyclable items for basic commodities.

- 4) Fostering Public Awareness on sustainable environmental practices: Acts such as open burning should be regarded as damaging to the environment, and thus proper education and awareness should be undertaken as highlighted in the Brunei Darussalam National Climate Change Policy.

Conclusion

Brunei Darussalam as a nation has a number of issues relating to environmental sustainability ranging from weak environmental law enforcement to reliance on the oil and gas industry. While there has been some form of effort made towards a more sustainable environment, the effort is lax and a firmer approach is needed to bring attention to the issue of environmental sustainability. In this paper, we have expounded on the issues with the enforcement of sustainable practices as well as its implications with the addition of possible solutions.

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National Chapter	: Brunei Darussalam
Chamber topic	: MODERNISING INTELLECTUAL PROPERTY (IP) LAWS TO ADDRESS THE GROWTH OF AI TECHNOLOGY

1.0 INTRODUCTION

As we enter the era of globalization and digitalization, the concept of intellectual property's significance and scope have evolved as the time passes. Whereas the artificial intelligence technologies have opened up new challenges and opportunities.

Intellectual property (IP) ranges to a set of rights aimed at safeguarding human ingenuity and creativity. These rights include copyrights, patents, trademarks, and trade secrets as well as the incentives provided to individuals and organisation who invest their time, resources, and intelligence in the development of new ideas and technologies. These legal rights grant the inventor or creator the sole right to fully exploit his invention or creativity for the specified period of time.

Artificial intelligence is a broad field of computer science concerned with creating intelligent machines capable of doing activities that would normally need human intelligence. They often learn how to do so by analyzing huge volumes of data and searching for patterns to use their own decision-making.

Having said that, as AI progresses rapidly computers obtain human-like

abilities, blurring the line between humans and machines. Traditionally, computers were instruments that aided human creation, with clear ownership and authorship reserved for humans. However, current AI advances enable machines to independently undertake creative jobs, including complicated processes such as software development and artistic endeavors like composing music, generating artwork, and even writing books.

2.0 STANCE FROM LEGAL AND CULTURAL PERSPECTIVE

In Indonesia, they provides articles on IP Law in Article 1 and Article 40 where AI are categorized as Copyright and to add, in the articles stated that the creator of the inventors are protected. In relating this article to AI, ChatGPT is one of the examples of a computer programs that were used often in our daily lives. ChatGPT is used as a tool to help the students in doing some research but what's concerning is that excessive reliance on ChatGPT arises issues which in results in them becoming passive learners and lacking critical thinking skills.

We believed that AI such as ChatGPT in a way helps most of the students in doing assignments within the given time. For instance, ChatGPT are known for it's accessibility at any time which could provide assistance without hindrance. Even lawyers uses ChatGPT, due to it's fast and efficient information accessing the information. To support, with the case of Mata V Avianca Airlines,⁵ where Steven A. Schwartz and the law firm of Levidow used ChatGPT to provide information in giving a judicial opinion.

Secondly, ChatGPT could address a wide range of topics and queries, giving the idea to the user in terms of facts and information on any topics. For example, in giving the rules and regulations of the country such as in

⁵ <https://caselaw.findlaw.com/court/us-dis-crt-sd-new-yor/2335142.html>

Indonesia on Intellectual Property Law. However, this might bring to an issue where chatGPT could fabricate cases or rules, for instance, chatGPT states the rules of the respective country where in fact the rules itself that are stated does not exist in the country.

ChatGPT may give fake information to the user or more specifically giving inaccurate information to the users that may harm their learning experience and in decision making skills especially for students. Next, in regards of culture, consider culture and sensitivities in the development and the use of ChatGPT. As it will offend the culture by using much technologies or excessive usage of ChatGPT which by means forgetting the cultural value of the states. Lastly, ChatGPT lacks of Emotional Intelligence. Where the AI are not able to comprehend human emotions as much as an educator or lecturer would do. As we all know that emotional intelligence is important among humans as it would affects our learning skills and etc.

3.0 PROPOSED SOLUTIONS REGARDING THE ISSUES AROSE

To address this issue, it is essential to understand that we can not stop people from using ChatGPT but we can control it by creating a sense of awareness of the responsibility of ChatGPT. Firstly by educating the students on how to be a responsible AI user. Which teaches the students about the capabilities and limitations of AI. Which makes them aware that Ai tools are aids, not replacements, and should be used responsibly to enhance their learning experience, not substitute their efforts. Not only that, the lecturers can assign thoughtful tasks that require higher-order thinking skills, creativity and personal reflection which encourage the students to explore various perspectives, creativity and critical thinking. As well, conduct integrated ethical discussions of using AI ChatGPT. This can raise awareness about the responsible use of technology and the importance of maintaining a balance

between automation and personal effort.

Secondly, by regulating a new guidelines and protocols in order to balance the usage of AI within the country in respecting the cultural norms and also to protect the learners or students from using AI excessively, resulting them from being a passive learners and lacks of critical thinking skills.

4.0 CONCLUSION

Overall, in this time of globalization and digitalization, important changes are taking place in terms of intellectual property in line with advances in artificial intelligence technology. In Indonesia, where artificial intelligence is covered by copyright law, the use of artificial intelligence tools such as ChatGPT raises concerns regarding passive learning, dissemination of misinformation, and inability to recognize emotions.

To address these challenges, it is important to raise awareness among users, especially university students, about the responsible use of artificial intelligence. This involves understanding that artificial intelligence acts as a tool not a substitute, and emphasizing the importance of critical thinking skills. In addition, the implementation of guidelines and protocols can help create a balance in the use of artificial intelligence, respect cultural norms, and ensure that artificial intelligence complements, not replaces, human capabilities. With a proactive approach, we can take the benefits of artificial intelligence while addressing the ethical and educational impacts that may arise.

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Open Thoughts Session - ALSA Conference 2024

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Chamber Topic:

Modernising Intellectual Property (IP) Laws to Address the Growth of AI Technology and How The Regulations Should Protect the Copyrights.

1. Introduction

Artificial Intelligence (AI) technology has played a big role in the modern era. AI is the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings, as defined by Britannica. Many parts of our lives, over the past many years, have been consumed by different types of technologies allowing their development. With its development, it has progressed our daily tasks to become much easier. By acknowledging the Intellectual Property (IP) Laws to be modernized and allowing the usage of AI technology in society, would increase the possibility of an established community.

2. Country's stance from legal and cultural perspective

The usage of Artificial Intelligence has undoubtedly affected how the community functions as legal professionals now are more dependent on AI. Furthermore,

using AI to get work done has turned to a habit that many find effective. If we're looking into Indonesian Positive Law as our legal base, Mister Joko Widodo, as the 7th and current president, supports the idea of using Artificial Intelligence for effective assistance for the human resources. This is what he stated in the opening remarks of Rapat Kerja Nasional BPPT 8 Maret 2021. Currently, there is no specific legal base regarding the implementation of AI and whether the users get copyrighted or not. However, if we were to refer to Article 1 UU ITE:

“Agen Elektronik adalah perangkat dari suatu Sistem Elektronik yang dibuat untuk melakukan suatu tindakan terhadap suatu Informasi Elektronik tertentu secara otomatis yang diselenggarakan oleh Orang.”

Artificial Intelligence can be classified as an Electronic Agent as it fulfills the written regulation. Automatically, there is a legal base that comprehensively regulates the responsibilities that an Electronic Agent has, this includes ensuring the safety and secrecy of the user's private data. However, if the case were to copy and paste a whole article that's generated by an AI, the systematics on how an AI generates an answer must not be forgotten. AI produces answers by using NLP to understand the question and ML to find the most relevant and informative answer. The AI model is trained on a large dataset of text and code, and it learns to identify keywords and patterns in the text. Therefore, claiming something that is produced by an AI and claiming it as ours would violate the copyright regulations as we're referring to many journals without proper citations. Therefore, this contradiction means that there is still a legal absence regarding this matter. Additionally, if we refer to UU Hak Cipta:

“Hak Cipta adalah hak eksklusif pencipta yang timbul secara otomatis berdasarkan prinsip deklaratif setelah suatu ciptaan diwujudkan dalam bentuk nyata tanpa mengurangi pembatasan sesuai dengan ketentuan peraturan perundang-undangan.”

Therefore, there must be proper regulations regarding the protection of copyright

to ensure the law's certainty.

Similarly in Brunei Darussalam, during the 35th University Brunei Darussalam (UBD) Convocation Ceremony in 2023, His Majesty Sultan Haji Hassanal Bolkiah has called for AI

guidelines to acknowledge the usage of AI. These guidelines are to make use of the 'efficiency and productivity' from combining Artificial Intelligence (AI) and human intelligence. This welcome has been made to take into consideration the efforts of UBD that was to build a digital port for job hunting called 'CareerBN', equipped with machine learning and AI capabilities. This would allow easier efforts of finding and getting jobs, especially for the newly graduated students. The teaching of Artificial Intelligence (AI) and Robotics has also been under the work of UBD putting this part of technology to be taken into account under their Bachelor of Digital Science. Therefore, this encouragement of the educational sector in Brunei Darussalam opens the path for the society to explore this side of technology.

3. Proposed solutions regarding the issues arose

There are few proposed solutions that can be done for the issues that arose in our perspective. One way that can be done to resolve these issues is by reviewing and retaining the license agreements for instance by having a valid license of the material and the property. In this way they can have restrictions to prevent AI from infringement and protecting the owner's property. Companies can protect their intellectual property by allowing the right to sue if any infringements have been found. The use of AI on contents should be given a disclaimer if it involves any of the human works or creation.

Respectively, by introducing regulations and statutes of the property to create better establishments and avoid violation. In this way, promoting the regulations may come in handy as it is for the purposes of maintaining patent and copyright

rights and get the infringers punished where the business requires it. To add more, the application of prohibition of AI under employment contracts by means that when it requires human creation and efforts take place.

In addition, cooperation or collaboration with AI with other productive work may integrate their partner's technology into their system in order to ensure that they are imperative to successful cooperation. Another point that can be viewed is by teaching about AI in educational sectors such as schools to make it known and as a remark to society. With the widespread of AI system and influence among the community and society at a large scale, the decisions made by AI could have significantly made an impact on its transparency which holds great importance from an ethical view.

4. Conclusion

Artificial Intelligence is a technology that is created to help human resources to work more efficiently. In the law section, Artificial Intelligence would give huge help towards legal professionals as AI can help automate routine tasks and streamline workflows and ultimately leading to increased efficiency and cost savings so lawyers can dedicate more time to focus on clients. It is currently still an issue that there are no specific and solid regulations regarding the usage of AI and how it can protect copyrights. Therefore, solid regulations to limit the usage of AI and still protect the copyrights of other people's works that are used for references are needed in the legal system. This would help to ensure legal certainty and ultimately help to reach the main purposes for law's existence, which are justice and general safety.

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Position Paper on Marital Rape Occurrence

OTG-8



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1. Introduction

1.1 Background of the Marital Rape

Marriage is a very sensitive subject because it is said to be a new beginning for two people who will spend their lives together. For some, it is the most beautiful part of their lives, while for others, it is simply a way to fulfill their sexual desires. Because of the mindset of viewing marriage as a license for sex and a woman as a thing who exists to fulfill men's desires, marital rape occurs.

Marital Rape is the term used to describe sexual acts committed without a wife's consent and/or against her will by the woman's husband. He may use physical force, threats of force to her or another person, or implied harm based on prior assaults, causing the woman to fear that physical force will be used if she resists.

In Indonesia according to the National Commission on Violence Against Women, one type of sexual violence is forced sexual intercourse without consent particularly, when this sexual relationship occurs between husband and wife it is interpreted as 'Marital Rape'⁶. In Indonesia itself marital rape is not regulated in the Criminal Code therefore due to the absence of specific regulations regarding marital rape, the legislative has an urgency to reform the regulated law in order to provide a certain legal source for victims of marital rape. The core factors that led to the occurrence of marital rape is due to the lack of public understanding regarding the concept which is influenced by the culture and marriage law that exists in Indonesia. Additionally, society's distrust of marital rape is caused by the misperception that after marriage, committing sexual intercourse is legal even in instances where one party does not want it.⁷

⁶ "Mengenal Istilah Marital Rape, Pemerkosaan dalam Rumah Tangga yang Sering Dipandang Sebelah Mata," Beautynesia, <https://www.beautynesia.id/life/mengenal-istilah-marital-rape-pemerkosaan-dalam-rumah-tangga-yang-sering-di-pandang-sebelah-mata/b-270933>, accessed January 26 2024

⁷ "Konsep Marital Rape, Masih Dianggap Antara Ada dan Tiada", CNN Indonesia, June 18 2021, <https://www.cnnindonesia.com/nasional/20210617134110-12-655661/konsep-marital-rape-masih-dianggap-antara-ada-dan-tiada/amp>, accessed January 26 2024

Marital rape, which refers to sexual intercourse forced upon a spouse without their consent, is a sensitive and controversial issue in India. While the Indian Penal Code criminalizes rape in general, it contains an exception for sexual acts between a husband and his wife if the wife is over 15 years old. This exception essentially means that marital rape is not recognized as a crime in India. In Indonesian Criminal Law, marital rape is not regulated in the Criminal coden,

In Korea, marital Rape refers to the view that forced sexual intercourse between a couple through threats of violence or threats is considered rape. The family is the most basic group in leading a social life, and especially, a smooth married life between couples is a basic element in maintaining social order. Research on issues that are becoming important issues in each field of criminal and civil law in marital life is expected to have a positive impact on maintaining social order. First of all, regarding whether to recognize the crime of rape between husband and wife, the conventional wisdom and precedent was to deny it. However, in January 2009, the Busan District Court issued its first ruling that the crime of rape between husband and wife was recognized, and active discussions have been taking place once again recently.

1.2 Stances on behalf of the group

Taking into account the aforementioned statement and acknowledging the impact, adverse affects and the causes that led to the occurrence of marital rape in our society, we are within the stance that we are against marital rape. Additionally, not only that marital rape is neglected in our society it is often overlooked, Therefore, we are aware of the urgency of this matter and that it suggests the need of a vital change within tackling marital rape cases and raising awareness in regards to the enhancement of compliance towards regulations of

marital rape.

1.3 Statistic

According to various statistics around the world, it is evident that there has been a increase of domestic violence, either sexual or physical that occur in marriage couple due to might be various reasons why marital rape occurred between marriage couples, such as sexual perversion of the husband; desire to assert supremacy of men over women; petty domestic concerns; attempt of women to demand her rights in marital partnerships, etc. This can be show through various statistics, such as:

- In Indonesia, there are more than 11 thousand cases of sexual violence in Indoensia. Cases of Sexual Violence against women are still a serious threats this year, pertaining to the Indonesian National Commission on Violence Against Women they claimed that they have received 1,759 cases reports throughout January-November 2022 period. In Indonesia, the standard legal definition of Marital rape has not been stipulated and there are as many cases of 6,480 cases (79%) out of 8,234 cases in 2021.⁸
- According to UN Women, an organization that promotes women's legal rights, every third woman across the globe has experienced violence, either sexual or physical, by a close companion, a non-partner, or both. According to it, in 2018, as estimated one in seven women had experienced physical and sexual violence from an intimate partner or husband.
- Further, the International Men Gender Equality Survey conducted by international centre for Research on Women noted that 1 in 5 men forced their wife or partner to have sexual intercourse with them. The data also shows that 20% of Indian men admit that they forced their wives or partners to have sexual intercourse.

⁸ "Another Second Chance: Rehabilitation of marital rape offender for the victim's recovery", Indonesian Journal of International Law, Faculty of Law Universitas Indonesia, Current Issue: Volume 21 Number 1(2023), <https://scholarhub.ui.ac.id/ijil/>

- In Korea, according to the sexual violence victimization rate based on the 2007 national household survey, 9.7 out of 1,000 adult women experienced 42.7 cases of marital rape.⁹
- Recent studies on domestic violence reveal that abuse is linked to sexual intercourse. According to one study, 54% of abuse included rape, and according to another study, 22.9% of respondents answered that they had experienced being forced to have sex immediately after being violently assaulted by their husbands, and in particular, 6.2% of respondents experienced this several times. It is said that it becomes %. After marriage, 67 respondents who had experienced violence such as beating them randomly, threatening them with dangerous objects such as knives, or directly using them were asked whether they had ever been forced to have sex right after the violence. As a result, 15.0% of the respondents said It appears that such experiences occur relatively frequently. These studies report that severe violence is more likely to be accompanied by forced sex.

2. Problem Analysis

Marital rape sometimes results from sexual conflict between a couple, and sometimes rape occurs between a couple as part of domestic violence. Although violence is used in cases of abuse, it is different from marital rape in that there is no 'sexual' abuse or 'sexual' violence. Marital rape has been relatively under-covered in discussions about domestic violence because, compared to victims of other forms of domestic violence, victims of marital rape are reluctant to disclose this issue.

There can be many reasons as to why marital rape occurs between marriage couples such as sexual perversion of husband; desire to to assert superiority of men over women; petty domestic issues; attempt of women to demand her

⁹ Seung-kwon Kim et al., Ministry of Gender Equality and Family, and Korea Institute for Health and Social Affairs, 2008: 144

right in marital relationships etc.

Also, another reason is the role commonly assigned to married women in our society. The women in our society is defined as *pati-vratrasti*, which means pure, faithful and obliging women. Hence to why, women are obligated to follow her husband's instructions and fulfill his demands without any questioning. As a result, the concept of a good wife benefits primarily men. Sexual relationships are regarded as a vital aspects of a married woman's duty to her husband, and she is not expected to deny it to him. Her duty must consist of submission and surrender.

2.1 Real life Case Examples

One example of a significant case example of marital rape in Indonesia would be the case of Karto and Ani with the Court Ruling No. 126/Pid.Sus/2015/PNPbg. An aggravating factor in the judge's decision was that Karto's action as a husband resulted in serious injuries to Ani. Sentenced to 7 months in prison under Article 46 of the Elimination of Domestic Violence Law, the judges acknowledge the reconciliation between Karto and Ani. The judge's decision was supported by the objective of general prevention, emphasizing the importance of similar acts in the broader community.

In Korea, among the marital rape cases brought to trial, in two cases brought to the Supreme Court, the two were found not guilty in 1970 and guilty in 2009, but in the 2009 case, the couple had already agreed to divorce. On May 16, 2013, the Supreme Court unanimously ruled that marital rape can be established. Meanwhile, in 2015, a wife who had sex with her husband while he was in divorce proceedings was indicted on the charge of marital rape. The court found her not guilty, saying, "It is difficult to say that she used force or physical force to have sexual intercourse against the other person's will." did.

3. Recommendations on mitigating the problem

3.1 Prevention of Marital Rape

Preventing marital rape involves legal and societal measures to ensure the protection of individuals within a marriage. It's important to note that laws and their enforcement vary across different jurisdictions, so the effectiveness of these precautions may depend on the legal framework in place. Here are some precautions that can be implemented by the law to prevent the risk of marital rape:

1) Criminalization of Marital Rape

- Explicitly criminalize marital rape in the legal system. This involves removing any exemptions or loopholes that may exist in laws related to sexual assault.
- For example, Several women's rights organizations and activists have been advocating for the criminalization of marital rape in India, arguing that it is a violation of a woman's fundamental right to bodily autonomy and violates the principles of gender equality. However, there is still a lack of political will to make changes to the existing law, and many people still believe that the issue should be resolved within the private sphere of a marriage.
- In Korea, marital rape can be punished under the Korean current criminal law. However, considering the special nature of the family, various effective countermeasures as well as punitive sanctions must be prepared. On the premise that a marital relationship is different from a general relationship, questions such as 'how to project the special characteristics of a married couple into the criminal law' and 'is it really appropriate to apply the standard for general rape crimes to married couples as well?', in detail, how to do it. Whether marital rape is established, whether the assault and threats of general rape will be applied as is, what will be the statutory punishment, what will be done about similar rape and forcible molestation between spouses, whether new conditions for reduction due to the special nature of the

marriage will be established, or whether the provision for pro-accusation will be maintained. There is a need to discuss the detailed legislative direction, such as whether to do so.

2) By giving education and awareness

- Emphasize the importance of informed consent in intimate relationships. Laws can specify that consent is an ongoing process and that individuals have the right to refuse sexual activity at any point, even within the context of marriage.
- Preventive intervention efforts have largely consisted of school-based programs on conflict mediation, violence prevention in general, dating violence, sexual abuse and spouse abuse. Sexual assault and rape education programs seem to be increasingly common on college campuses; conflict resolution programs have been instituted in thousands of middle and high schools. The evaluations that have been done of these programs generally test students' knowledge about and attitudes on relationships violence before and after preventive program, as well as personal experience with dating violence.

3) Providing support services for the victims

- Establish support services for victims of marital rape, including counseling, legal assistance, and shelters. Encourage reporting and provide protection for victims who come forward. If these services are readily available, victims may feel more empowered to seek help and report incidents.

4) Changing Societal Attitudes

- Criminalizing marital rape can contribute to changing societal attitudes towards the acceptability of such behavior. However, it may take time for these changes to occur, and education and awareness campaigns are essential to challenge existing beliefs and norms. It's important to recognize that making marital rape illegal is a significant step toward protecting individuals within marriages, but it must be part of

a broader strategy that includes societal education, victim support, and effective law enforcement. The success of efforts to reduce marital rape will depend on a multifaceted approach that addresses both legal and cultural aspects of the issue.

3.2 Position of the society on dictating the laws of punishments of the marital rape

Society often plays a role in influencing legal changes, and public opinion can contribute to shaping laws, including those related to the illegalization of marital rape. However, determining the specifics of legal punishments is generally the responsibility of lawmakers, legal experts, and the judicial system. The process of deciding on appropriate penalties for crimes, including marital rape, involves careful consideration of various factors:

1. Legal Expertise:

- Legal professionals, lawmakers, and experts in the field are typically involved in crafting and refining legislation. They consider legal principles, constitutional rights, and the overall legal framework when determining appropriate punishments.

2. Justice and Fairness:

- The legal system aims to ensure justice and fairness. Punishments should be proportionate to the severity of the crime and consider factors such as intent, harm caused, and the rights of both the victim and the accused.

3. International Standards:

- Countries often align their legal systems with international standards and conventions. Decisions on punishments may be influenced by global best practices and human rights principles.

4. Public Input:

- While society's input and awareness are crucial for legal changes, the determination of specific punishments is typically not left to direct public vote. Public input, however, can be considered during legislative processes through consultations, public hearings, or surveys.

5. Prevention and Rehabilitation:

○ Punishments are not only about retribution but also about preventing future offenses and rehabilitating offenders. The legal system aims to strike a balance between protecting society, ensuring justice, and facilitating the rehabilitation of those who have committed crimes.

While society's moral values and expectations can influence the legal process, decisions regarding the punishment for marital rape are typically made within the framework of established legal principles and procedures. It is important for legal systems to balance the need for accountability with the goal of rehabilitation and societal protection. Public discussions and awareness campaigns can contribute to informed policymaking, but the specifics of legal penalties are generally determined by legal experts and policymakers within the confines of the legal system.

4. Conclusion

Raped victims are victims of violence, and the fact that the perpetrator and victim are married compounds the severity of the situation. Because the accused is a husband and the victim is a wife, the crime of rape cannot be absolved and classified as forced rape with domestic violence. Article 21 prioritizes individual autonomy. "Rape is rape, be it martial or non- marital, the victim is women only" ,

Forcing the significant other for sexual intercourse without their will is a form of rape or visa-versa one should understand that marriage is not a license for sex and our society fail to understand this and for them it is just a part of married life. Furthermore, many countries around the world, including some neighboring countries of India, have already criminalized marital rape, and there is no evidence to suggest that it has led to a breakdown of marital relationships.

Therefore, in order to ensure that women's rights are protected and that they are able to live free from violence and discrimination, there is a need for legal reform to criminalize marital rape in India. This would send a strong message that sexual violence in any form, whether it occurs within or outside of marriage, will not be tolerated, and would provide greater protection to women who are currently vulnerable to such violence.