

**A STUDY ON THE PRESUMPTION UNDER SECTION 113 OF THE
MALAYSIAN EVIDENCE ACT 1950; WITH SPECIAL REFERENCE TO
LEGAL POSITION IN OTHER COMMONWEALTH COUNTRIES**

By

Nabihah Bt Ishak (2012444076)

Nurellma Bt Hamzah(2012452318)

Nur Fatin Nabila Bt Sallehudin(2012451798)

Nor Amalina Dyana Bt Anizan(2012435408)

**Submitted in Partial Fulfilment of the Requirements of the degree of
Bachelor of Laws (Hons)**

**Universiti Teknologi MARA
Faculty of Law**

December 2014

“The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others”.

ACKNOWLEDGMENT

In the name of Allah, the Most Gracious and the Most Merciful Alhamdulillah, all praises to Allah for the strengths and His blessing in completing this research paper. This research paper is made possible through the help and support from many parties particularly: parents, lecturers, family and friends. We would like to dedicate our acknowledgment and gratitude towards all these people.

Special appreciation goes to our, Puan Mazlina Bt Mahali, for giving us valuable advice and guidance throughout the process of writing this research paper. Thank you for your immense guidance and advices throughout the journey in completing this research.

Secondly, we would like to thank each other as group members for completing this research within the timeframe. We want to sincerely thank to all our teammates for their corporation and moral support during the discussion for this assignment. Thanks for all the help, friendship and memories together.

Last but not least, our deepest gratitude goes to our beloved parents: for their endless love, prayers and encouragement for us to finish our study with a big success and help us in term of physically, mentally and even financially.

To those who indirectly contributed in this assignment, your kindness means a lot to us. The product of this research paper would not be possible without all of them. All the criticisms are like the bitter pills that we have to swallow, as people always said "*to succeed, we must be willing to take pains*".

Thank you very much. May Allah SWT bless all of us.

ABSTRACT

Section 113 of the Malaysian Evidence Act 1950 gives protection to rapist who is below the age of 13 years old from being charged. The provision provides for irrebuttable presumption of law even there is concrete evidence against the offender. Other commonwealth countries like United Kingdom, Hong Kong, Singapore and Australia had completely abolished the said presumption from their legal system. By seeing the development of the law in other Commonwealth countries, Malaysia is still left behind in the aspect of advancement and development of the law particularly Section 113 of the Malaysian Evidence Act 1950. In order to overcome that, some changes need to be considered. Section 113 of the Malaysian Evidence Act 1950 can either be abolished completely, following the mentioned commonwealth countries' position, or the presumption can be amended to be rebuttable. Other than that, the age provided in the section can also be reduced to 10 years old in line with that provided in Section 82 of the Malaysian Penal Code.

TABLE OF CONTENTS

Acknowledgement	ii
Abstract	iii
Table of Contents	iv
List of Cases	vii
List of Statutes	viii

CHAPTER ONE: INTRODUCTION

1.1	Introduction	1
1.2	Research Background	1
1.3	Research Problem	2
1.4	Research Objectives	3
1.5	Research Questions	4
1.6	Research Methodology	4
	1.6.1 Doctrinal Research Method	4
	1.6.2 Empirical Research Method	5
1.7	Significance of Research	5
	1.7.1 to the victims of rape	6
	1.7.2 to the society	6
	1.7.3 to the academic	6
	1.7.4 to the government	7
1.8	Scope and Limitation of Research	7
	1.8.1 Scope of the Research	7
	1.8.2 Limitations of the Research	8
1.9	Concluding Remarks	8

CHAPTER TWO: LITERATURE REVIEW

2.1	Introduction	9
2.2	Conceptual Framework	9
	2.2.1 Rape	9
	2.2.2 Age of Criminal Responsibility	10
	2.2.3 Presumptions	11
	2.2.4 The Concept of Wrongfulness	12
2.3	Theoretical Framework	13
	2.3.1 Biological Theory of Criminality	13
	2.3.2 Psychological Theory of Criminal Responsibility	15
	2.3.3 Social Theory of Criminal Responsibility	18
	2.3.4 Islamic Theory of Criminal Responsibility	19
2.4	Legal Framework	21
	2.4.1 History of Malaysian Evidence Act 1950	21

2.4.2	Malaysian Child Act (2001) (Act 611)	22
2.4.3	Malaysian Penal Code Act 574	23
2.4.4	Islamic Law	24
2.5	Concluding Remarks	26

CHAPTER THREE: LEGAL COMPARISON WITH OTHER COMMONWEALTH COUNTRIES

3.1	Introduction	27
3.2	Age of Criminal Responsibility in United Kingdom	27
3.2.1	The Abolition of Doli Incapax	28
3.2.2	Sexual Offences Act 2003	30
3.2.3	The Presumption at Common Law	31
3.3	The Age of Criminal Responsibility in Hong Kong	32
3.3.1	Juvenile Offenders Ordinance 2003	34
3.3.2	The Irrebuttable Presumption That a Boy under 14 is Incapable of Sexual Intercourse	35
3.4	The Age of Criminal Responsibility in Australia	36
3.4.1	The Irrebuttable Presumption That a Boy Under The Age of 14 Incapable of Sexual Intercourse in Australian States	37
3.5	The Age of Criminal Responsibility in Singapore	39
3.5.1	The Irrebuttable Presumption That a Boy Under 13 is Incapable of Committing Rape	41
3.6	Concluding Remarks	42

CHAPTER FOUR: RESULTS AND FINDINGS

4.1	Introduction	43
4.2	Interview	
4.2.1	Age of Criminal Responsibility in Malaysia	43
4.2.2	The Relation Between the Age of 13 as Specified in Section 113 of Evidence Act 1950 and the Ability to Penetrate	43
4.2.3	Alternative Legal Action That Can be Taken for The Offence of Rape Committed by a Boy Below The Age of 13	44
4.2.4	The Effects or Impacts of Abolishing or Reviewing the Provision to the Child Offender, Society and the Victim.	45
4.3	Concluding Remarks	46