## A REVIEW ON THE PENAL CODE: IMPOSING HARSHER PUNISHMENT AGAINST CHILD RAPIST

By

Mohd Afif bin Ahmad Zamanhuri (2007294392) Norsyazwani bt Abdullah (2007294552) Nur Zalika bt Mohd Asri Redha (2007294504)

Submitted in Partial Fulfillment of the Requiments for the Bachelor in Legal Studies (Hons)

Universiti Teknologi MARA Faculty of Law

October 2009

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

Praise to Allah S.W.T for we had successfully completed the research project. We would like to convey our gratitude towards those who have been helping and assisting us in the process towards the end of the research.

Special thanks to Mr Shukree Mohd Salleh, our supervisor in-charge for his contributions in the research, by proposing brilliant ideas and guidelines as to how this project paper should be conducted.

Credit must also be given to the contributors of this research particularly those who had given their expert knowledge in the completion of this project paper namely Mr Salim Bashir, Chairman of Criminal Law and Human Rights Committee, Selangor, Mr Lee Chong Fook, former Inspector, criminal law lecturer of UiTM and Dr Salmi Razali, Psychiatrist Hospital Selayang and senior lecturer from Faculty of Medicine UiTM.

Next, deepest gratitude should also be given to our parents who had been supporting us from the beginning through moral and financial support. Not to forget also to our fellow colleagues who had directly or indirectly contributed in the making of our research.

This research project has been carried out by a committed team. The team consists of Mohd Afif b. Ahmad Zamanhuri, where he contributed on the literature review, the conclusion and the recommendations of our research, Nur Zalika bt Mohd Asri Redha which had contributed in the case review and the findings of the research and Norsyazwani bt Abdullah, which her contribution has been on the reference to other countries and also the findings of our research. As for the introduction and analysis of s 375 and 376, it has been contributed through the efforts of all the group members. Additionally, all members of the group had involved in conducting the interviews, drafting of the interview questions and extractions of the interview session for the findings.

## **ABSTRACT**

This is a research project paper entitled "A Review on the Penal Code: Imposing Harsher Punishment towards Child Rapist". As the title suggest, our research will be conducted focusing mainly on the provision on the present punishment provided under the Penal Code.

Besides analyzing the present punishment, a review on the local cases pertaining to statutory rape will also be observed. In addition, literature review will also be conducted as well as making reference to the other countries with regards to the issue of child rape. Besides adopting library based research, interviews will also be conducted to gain information from the related context, namely the psychological, social and legal aspect.

As a result of the research, it is found that the present punishment entailed in the Penal Code is sufficient based on the certain basis. From the findings of our research, we have reached a conclusion that there is no need to impose harsher punishments. Accordingly, we have drawn out several recommendations based from what we have gain from this research beneficial to the public.

## **TABLE OF CONTENTS**

Ackno Abstra Conter List of	nts	ii iii iv vi
СНАР	PTER ONE: INTRODUCTION	
1.0	Introduction	1
1.1	Background of the research	1
	1.1.1 Rape Statistics	3
	1.1.2 Child Rape in Malaysia	4
1.2	Methodology	8
1.3	Research Questions	8
1.4	Objective of the Research	9
1.5	Scope and Limitation	10
1.6	Significance of the Research	10
1.7	Conclusion	11
СНАР	PTER TWO: CRITICAL ANALYSIS ON s 375 AND s 376 OF THE PENAL CODE (ACT 574)	
2.0	Introduction	12
2.1	The Legal Interpretation of Rape under s 375	12
2.2	The Punishment under s 376	16
	2.2.1 The Amendments on s 376	16
	2.2.2 The Analysis on the Present Punishment	18
2.3	Conclusion	20
СНАР	PTER THREE: CASE REVIEW ON CHILD RAPE CASES	
3.0	Introduction	21
3.1	Bacik bin Abdul Rahman v Public Prosecutor	21
3.2	Public Prosecutor v Mohd Nur Azuan bin Md Zain	26
3.3	Nordin Yusmadi bin Yusoff v Public Prosecutor	31
3.4	Conclusion 35	
СНАР	PTER FOUR: LITERATURE REVIEW	
4.0	Introduction	36
4.1	Punishment Proportionate to the Crime	36
4.2	A Need to Impose Greater Punishment	37
4.3	Child Rape Warrant Death Sentence	39

СНА	PTER FIVE: REFERENCE TO OTHER COUNTRIES	*
5.0	Introduction	42
5.1	India	42
5.2	United States of America	44
5.3	United Kingdom	46
5.4	Pakistan	47
5.5	Conclusion	48
СНА	PTER SIX: FINDINGS	J
6.0	Introduction	49
6.1	Proportionality of the against the Crime of Child Rape/Statutory Rape	49
6.2	Amendment to the Punishment in s 376 Particularly under s 376(2)	50
6.3	Awareness on the Increasing Number of the Child Rape/Statutory Rape	51
6.4	The Degree of Heinousness in Statutory Rape	52
6.5	Consensual Element in Statutory Rape	54
6.6	The Repulsion of Society on the Punishment of Statutory Rape	55
6.7	Factors that Lead a Man to Commit Rape against Child	57
6.8	The Achievement of the Present Punishment as a Deterrent Factor for	
	Statutory Rape	57
6.9	Conclusion	58
СНА	PTER SEVEN: CONCLUSIONS AND RECOMMENDATIONS	
7.0	Introduction	59
7.1	The State of Awareness	59
7.2	The Punishment of Statutory Rape is Sufficient	59
7.3	Recommendations	62
	7.3.1 Education and Awareness to Public At Large	62
	7.3.2 Separate and Specific Provision for Punishment of Child Rape	62
	7.3.3 Treatment to Ill Perpetrator	63
7.4	Conclusion	63
Bibliography		64
	Appendices	
I.L.	Appendix 1: Interview Sessions	66
	Appendix 2: Cases	
	Appendix 3: International Legislation	