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**DETERRENCE OF SEXUAL OFFENCES: THE PRACTICE IN
FEDERAL TERRITORIES**

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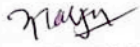
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AUTHOR DECLARATION

I hereby declare that the work in this academic project is my own except for quotations and summaries which have been duly acknowledged.

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Praise should be given to Allah s.w.t or the Almighty, peace and blessing is upon to our Prophet, Muhammad (p.b.u.h) and his family, all his companions and his followers.

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Hopefully, this academic project will be benefit to everybody as a one source of reference.

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ABSTRAK

Kajian ini bertujuan untuk mengkaji tentang pencegahan jenayah seksual yang memfokuskan tempat di Wilayah Persekutuan. Di mana, kajian ini lebih menjurus kepada hukuman untuk mereka yang terlibat dalam kesalahan jenayah seksual. Seterusnya, cara pencegahan dan langkah-langkah yang perlu juga di ambil kira. Kajian ini lebih menjurus kepada bidangkuasa Syariah daripada Civil, walaupun sesetengah kesalahan jenayah seksual tidak terdapat di dalam bidangkuasa Syariah Seperti jenayah rogol dan gangguan seksual. Kajian perpustakaan, dokumen yang berkaitan telah digunakan untuk mendapatkan maklumat bagi projek ilmiah ini. Kesimpulan untuk projek ilmiah ini, penulis telah membuat rumusan berdasarkan kepada fakta-fakta yang diperoleh daripada hukuman dan cara pencengehan terhadap kesalahan jenayah seksual di Wilayah Persekutuan.

ABSTRACT

The aim of this research is to study on the deterrence of sexual offences focusing in Federal Territories. Subsequently, it will focus on the punishment for those who involved and committed in sexual offences. Therefore, the suggestion on how to prevent sexual offences in Federal Territories will be viewed Furthermore, this academic project will illustrate on the syariah's jurisdiction only. However, the Syariah Law does not have a jurisdiction in certain cases circumstances such as rape and sexual harassment cases. The tools employed for data gathering purposes were library research, reviewing and relevant document. The finding indicates that, there are several suggestions on the precautions that should be taken in order to avoid one from sexual offences. In addition, it will point out the solutions in term to reduce the sexual offences cases that occurred in Federal Territories effectively.

ملخص البحث

يهدف هذا الموضوع للبحث عن كيفية علاج الجناية الجنسية خصوصا في الولاية الفدرالية. ومن أهم أغراض هذا البحث بيان الحكم على من يرتكب هذه الجناية الجنسية، ولا سيما عن كيفية علاج هذه المشكلة وخطواتها المهمة. وهذا البحث أيضا لبيان القانون الشرعي في تحكيم الخطأ الجنائي في الجرائم الجنسية من ناحية القانون الوضعي. ومهما كانت أحكام هذه الجنايات موجودة في القانون الشرعي. مثال ذلك كالاعتصاب والأفعال الجنسية الأخرى. وخلاصة هذا البحث العلمي اعتمد الباحث على قضايا الجنايات الجنسية الموجودة من قبل و كيفية الحكم والعلاج عنها خصوصا في الولاية الفدرالية.

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ABBREVIATION

Ibid	Ibiden
DBP	Dewan Bahasa dan Pustaka
Vol/V	Volume
p.	Page
pp.	Pages
p.b.u.h	Peace be upon Him
SWT	Subhanahuwata'la
CLJ	Current Law Journal.
SAW	Salla Allah 'alayh wa sallam

LIST OF STATUTES

1. Penal Code (Act 574)
2. Syariah Criminal Offences (Federal Territories) Act 1997.
3. Federal Constitution (AS At 15th January 2003)

LIST OF CASE

1. Zulkifli Ismail v PP (1994) 4 CLJ 450.
2. Sidek Ludan v PP (1995) 1 AMR 722.

GLOSARY

Al-Quran	The Holy Book revealed by Allah s.w.t to Prophet Muhammad (s.a.w.)
As-Sunnah	The Traditional of Prophet Muhammad (s.a.w.) including his deeds, saying and approval.
Hadith	The tradition of Prophet Muhammad (s.a.w)
Hadd/Hudud Islamic Law	Offence and penalty prescribed by Allah. The Law of Islam as provided by Allah for human being.
Liwat	Consummation of human based on the same gender.
Musahaqah	Consummation of human based on the same gender.
Dhimmi	Specific name for the non-Muslim
<i>Prima Facie</i>	The tools used to convict the person who is found guilty.
Sodomy	Homosexual
Khalwat	Close-Proximity
Jarimah/ Jenayah	nefarious act
Zina	Sexual intercourse out of marriage.
Baligh	The age of Puberty
Zina Muhsan	Both of man and woman has getting marriage found guilty committed in sexual intercourse out of marriage with others person.
Zina Ghairu Muhsan	Both man and woman has not getting marriage found guilty committed in sexual intercourse out of marriage.
Ta'zir	Discretionary penalty determined by Kadhi

TRANSLITERATION

1. ALPHABET

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
ء	,	فأر	fa'r
ب	b	برد	burd
ت	t	تل	tall
ث	th	ثوب	thawb
ج	j	جدار	jidār
ح	h	حليب	halīb
خ	kh	خادم	khādim
د	d	ديك	dīk
ذ	dh	ذهب	dhahab
ر	r	رفيق	rafīq
ز	z	زميل	zamīl
س	s	سلام	salām
ش	sh	شعب	sha'b
ص	s	صخر	sakhr
ض	d	ضيق	dayq
ط	t	طالب	tālib

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
ظ	z	ظالم	zalim
ع	‘	عقل	‘aql
غ	gh	غلام	ghulām
ف	f	فيل	fīl
ق	q	قلب	qalb
ك	k	كلام	kalām
ل	l	لب	lubb
م	m	مال	māl
ن	n	نجم	najm
ه	h	هول	hawl
و	w	ورق	waraq
ي	y	يم	yam

2. Short Vowel

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
_____	a	كتب	kataba
_____	i	علم	‘ālima
_____	u	غلب	ghuliba

3. Long Vowel

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
ا, ي	ā	عالم، فتى	‘ālim, fatā
ي	ī	عليم، داعي	‘alīm, dā‘ī
و	ū	علوم، أدعو	‘ulūm, Ad‘ū

4. Diphthong

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
و	aw	نوم	nawm
ي	ay	ليل	layl
يَّ	iyy	شافعي	shafi‘iyy(ending)
وَّ	uww	علوَّ	‘uluww (ending)

5. Exemptions

5.1 Arabic letter ء (hamzah) found at the beginning of a word is transliterated to the letter “a” and not to ‘.

Example: أكبر transliterated to: akbar (not ‘akbar).

5.2 Arabic letter ة (ta’ marbutah) found in a word without ال (al), which is coupled with another word that contains, ال (al) at the beginning of it is transliterated to the letter “t”.

Example: مكتبة الإمام transliterated to: maktabat al-imām

However if the Arabic letter ة (ta’ marbutah) found in a word with ال (al), in a single word or in the last word in a sentence, it is transliterated to the letter “h”.

Example: المكتبة الأهلية transliterated to: al-maktabah al-ahliyyah

DETERRENCES OF SEXUAL OFFENCES: THE PRACTICE IN FEDERAL TERRITORIES

CHAPTER ONE

1.0 BACKGROUND

There are many sexual offences that have been occurred nowadays especially in our country such as incest, sodomy or homosexual (*liwat*), *musahaqah* (lesbian), sexual intercourse outside marriage, sexual harassment, rape, close-proximity (*khalwat*) and so forth. However, this academic project will try to focus on the certain part of sexual offences like sexual intercourse outside marriage, sexual harassment, rape, sodomy (*liwat*) and *musahaqah* (lesbian). Nowadays, all these types of sexual offences were becoming worse in our society. Furthermore, majority of mass media have been discussed on this issue through their report specifically. The sexual offences are always occurred in our society numerous especially among Malay races.

Sexual offences are the crimes that involve sexual intercourse out of marriage and other sexual act. The main crimes in this category are 'rape', 'buggery', 'incest', 'indecent assault', 'indecent exposure,' 'gross indecency and 'abduction.' Meanwhile, Sexual harassment, lesbian and gay was known as sexual offences. The Sex Offenders Act 1997 contained on the national register of sex offenders. The names of those convicted of any of arrange of sexual offences entered in this register. Under the Act 1997 Act, sex offenders are obliged to tell every time they move. Under the crime and Disorder Act 1998, convicted sex offenders are subjected to supervision on release for up to ten years.¹

In this academic project paper, it also focuses on the certain part of sexual offences. These sexual offences specifically discussed on cases of sexual harassment, rape, sexual intercourse that prohibited *liwat* and *lesbian* (homosexual

¹ LB Curzon, *Dictionary of Law*, 1994, International Law Book Services, p. 179.

and lesbian). Therefore, it will try to search deeply about the types of offences, the punishment of and try to find the solution of these problems.

In the book of Islamic Punishment, there were two words used in determine the definition of offences. They were “*Jarimah*” and “*Jenayah*”. Generally, these words are used in term to show on nefarious act.² In other circumstances, fuqaha used these two words to define nefarious act that prohibited by Syara’ especially Islam itself, including the man bodies, property, life and others. Most of fuqaha use the word of “*Jenayah*” to show nefarious act. However, the different between “*Jarimah*” and “*Jenayah*” using by fuqaha is not the problem. It is because the concept of both items exactly same meaning to show about nefarious act regarding to the people behaviour.

In the Malay language there the word of “*Jarimah*” and *Jenayah* are same. It includes of all definition of offences.

“Undang-Undang *Jenayah*” is the law system in our country. The objective of this law is to prevent the wrong attitude among our community. In this law, it has been listed what is the offences itself.³ One of the offences in this law is related to the sexual offences.

1.1 DEFINITION OF CRIME

The first group from Islamic Scholars stated that, crime or act of crime is strongly prohibited by Allah SWT whether regarding to the human relations such as homicide, or relating to the property.⁴ This statement clearly showed that how Islam itself forbidden any criminal to all believers. The second groups from Islamic Scholars have pointed out that crime is an illegal action that has been forbidden by Syara’ and any person who committed in any criminal offences will

² Ibnu. Qudamah , “*Al- Mughni*” Jld. 8 dan 9

³ Roslan Mat Nor and Zamani Haji Sulaiman, *Pentadbiran Keadilan Jenayah di Malaysia*

⁴ Dr. Mahfodz Mohamad, 1985, “*Jenayah Dalam Islam Satu Kajian Ilmiah Mengenai Hukum Hudud*”, 1985, Nurin Enterprise. p.1

be punished by Allah SWT.⁵ Besides that, Robert Allen & Andrew Delahunty stated in their dictionary that the word of 'crime' connotes the name for serious offences, especially one that breaks the law.⁶

1.2. DEFINITION OF HUKUM AND LAW IN ISLAMIC CONTEXT

In Islamic Education Context, the word of law can be divided into two types that are '*hukum*' and 'law'. '*hukum*' or punishment is the *syariat*' guideline related to the act of human whether in individual or in community. The '*hukum*' will be carry out based on Islamic guideline such as obligatory, commendable, illicit, legal, invalid and so forth. Law is the punishment Principe that any country used it as the guideline to punish the guilty person.⁷

"Law" is the part of Syariah to be the guideline to all the believers what is forbidden and what is not. "In Islamic religion the good value is the first that followed the *Syariah Islamiah* to be the guideline for any punishment.⁸ Basically, The Holy Quran and the Hadis by Prophet (s.a.w) is the main sources in referring to make any laws including views from companion also can be used.

1.3. THE CRIMINAL AND THE COMMUNITY

Today, the criminal has been happened in our community today especially the criminal related to the case of sexual offences. Allah had given His command to the mankind as guideline in their life. Although, they know the criminal still occurred. This is because they did not have the good value. No matter how purified and reformed a society becomes, crimes will still be committed nowadays. Therefore, it is very important for us to examine the problems of crime and its solution, the punishment of the criminal and try to find the cause of this problem.

⁵ Dr. Mahfodz Mohamad, 1985, "*Jinayah Dalam Islam Satu Kajian Mengenai Hukum Hudud*", 1985, Nurin Enterprise. p. 1.

⁶ Robert Allen & Andrew Delahunty, 2002, *Oxford student's Dictionary*, Oxford University Press. p. 239.

⁷ Professor Dato' Dr Mahmood Zuhdi Hj Ab Majid, 2001. "*Peranan Perundangan Islam dalam Pembinaan Tamadun Melayu*." Vol 1. April. p. 5-13.

⁸ Professor Dato' Dr Mahmood Zuhdi Hj Ab Majid. 2001. "*Peranan Perundangan Islam dalam Pembinaan Tamadun Manusia*" vol 1. April. p. 5-13.

When a crime happened, it is not necessary for us to blame the criminal but we should try to see the social institution, the leaders, the members of the society and the law provided whether it is strongest or weakness as well.

Allah had stated that:

(فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَى فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ⁹)

Means: "If one of them transgresses beyond bounds against the other, then fight you (all) against of them transgresses until it complies with the command of God."¹⁰

In conclusion, sexual offences are part of the crime that the punishment should be given should be given to the person who is committed in such crime. It is very important to promulgate the special provisions of law, the strict leaders and the cooperation from all community in order to prevent the problem of sexual offences effectively. Beside that, the Islamic believers should use the Holy Quran and Hadis as for their guideline in all the time in their life.

⁹ Al- Quran , Surah Al- Hujurat verse 9.

¹⁰ ‘ Abdullah Yusof ‘Ali, The “*Holy Qur’an Original Arabic text with English Translation & selected commentaries*,” 2000, Saba Islamic Media Sdn. Bhd. P. 640

CHAPTER TWO

2.0 TYPES OF SEXUAL OFFENCES

There are many types of offences regarding to the sexual matters. Everyday, the mass media have reported about the cases concerning to the sexual offences. It is enumerated as follows:

- (i) Sexual harassment
- (ii) Rape
- (iii) Sexual intercourse out of wedlock
- (iv) Sodomy (*Liwat*) and *Lesbian*(As-Sahaq)

However, in this academic project we will discuss or focused only on the sexual offences relate to the rape, sexual harassment, sexual intercourse out of wedlock, Sodomy (*liwat*) and *lesbian*. Currently, these types of sexual offences are always happened among community specifically in the part of Federal Territory such as Wilayah Persekutuan. We keep wondering why it is happened. Is this becoming the norms or way of life of our community today? Or is this the behaviour of our community today or is this is the trend of the years by our community today? The answer is hard to find but it already stated inside our heart and our state of mind.

2.1 SEXUAL HARASSMENT

Sexual harassment is a complex social issue, which involves human behaviour, people's perception and the social norms of society. A viewed from the sociological angle, sexual harassment is deviant sexual conduct or behaviour which is socially unacceptable or which does not conform to the social norms of society.¹¹

¹¹Tengku Dato' Omar b. Tengku Bot and Maimunah Aminuddin, "A Guide to the Malaysian Code of Practice on Sexual Harassment in the Work Place", August 2000, Leeds Publication. p.35-47.

From the above explanation, it can be determined that the sexual harassment is the subjective things. Sexual harassment can be occurred in any places, times and situation. These types of sexual offences can be occurred based on the behaviour of every individual. The attitude and the behaviour are also can be influenced to the causes of the sexual harassment, consequently, so that we can determine them through their behaviour and attitude in the workplace. However, the sexual harassment not only found at the workplace, but it can be occurred in the public places as well such as at the bus stop, shopping complex, public toilet and others. Generally, both man and woman involved in the sexual harassment. However, normally man is a person who commits such crime and woman is a victim.

Sexual harassment may be happened to anybody. It is not specified to any person because it concludes all. It also not confined to one level of worker class or professional. It can happen to all level include the executives and managerial staff. It can happen to both males and females.

Sexual harassment is a form of conduct or behaviour. It is important to identify what behaviour constitutes sexual harassment. However man and women have differing perceptions in conducting sexual harassment. Different countries also define the differently term although the definition is similar. Furthermore, what sort of behaviour constitutes sexual harassment depends on the perceptions where it's been influenced by factors such as social norms, religion, culture, custom, and locality and others.

PART OF SEXUAL HARASSMENT

The code provides a definition, which is three parts:

- a) The main clause, which describe the general nature or characteristics of sexual harassment. There are three characteristics provided in the definition, that is:
 - (i) Sexual harassment is unwanted conduct- unwanted by the victim
 - (ii) The conduct must be of a sexual nature
 - (iii) The conduct may be of the following kinds:
 - Verbal harassment

- Nonverbal harassment (gesture)
- Visual harassment
- Psychological harassment
- Physical harassment

Further, sexual harassment is divided into two categories:

- (i) Sexual coercion which results in some direct consequences to the victim's employment status or employment benefits; and
- (ii) Sexual annoyance or hostile environment harassment.

In the first category, sexual coercion, the perpetrator, as a superior abuse his power in the employment relationship by taking undue advantage of the economic vulnerability and economics and economic dependency of the subordinate to coerce the subordinate into granting sexual favours. If the subordinate accedes to the superior's sexual solicitation tangible job benefits, follow, and conversely, if the subordinate refuses, job benefits are denied.

The second category has no direct link to the victim's employment status or employment benefits. However, the offensive and annoying conduct creates a hostile and bothersome work environment, which the victim has to tolerate. This category of sexual harassment can be committed either by a superior against a subordinate or by an employee against a co-employee or by a client against an employee.¹²

Men and women have different perception about sexual harassment and their communication also different. For instance, when a man talks to a women and causes sexual harassment. The women will think that the man tries something bad to her that man will have another meaning in his mind. The variety of factor such as social norms, religion, culture, custom, locality and others also can be considered as sexual harassment. Sexual harassment can be divided into verbal harassment, non-verbal harassment (gesture), visuals, physiological harassment and physical harassment.

¹² Tengku Dato' Omar b. Tengku Bot and Maimunah bt. Aminuddin, "A Guide to the Practice on Sexual Harassment in the Work Place", 2000 Leeds Publication, p.42.

The types of sexual harassment can be classified as following behaviours:-

Unspoken

The unspoken of sexual harassment can be divided such as gaping and staring at a person. Beside that, in appropriate facial expressions, including blowing kisses and winking also the types of sexual harassment. The types of sexual offences also can be found in appropriate display of items and décor, including T-shirt with sexual message or pictures, calendars and other pictures.¹³

Spoken or verbal harassment

Means by using dirty words that give bad meaning to a person who hear it. The type of spoken sexual harassment is following:

- ❖ Calling a person by a pet name for example “honey”, “sweetheart” and “saying” (Verbal expression).
- ❖ Spreading gossip and making open comments about an employee’s personal life.
- ❖ In appropriate sounds and comment for example kissing sounds, comments an employee’s body or dress.
- ❖ In appropriate conversation, talking about an employee’s sex life.¹⁴

Physical

The type of physical sexual harassment can be followed:

- Purposely touching any part of the body.¹⁵

The person who touching anybody faces to the man or women is also can we call the sexual harassment and trying to make love with that person. If the person was touching any part of body such as at the secret place and breast that we call the sexual harassment.

¹³ Tengku Dato’ Omar b. Tengku Bot and Maimunah Aminuddin, “*A Guide to the practice on sexual harassment in the workplace.*” August 2000, Leeds Publication, p. 42.

¹⁴ Tengku Dato’ Omar b. Tengku Bot and Maimunah Aminuddin, “*A Guide to The Practice on Sexual Harassment in the Workplace.*” August 2000, Leeds publication, p. 42.

¹⁵ Tengku Dato’ Omar B. Tengku Bot and Maimunah Aminuddin, “*A Guide to the Malaysian Code Practice in the Work Place*”, August 2000, Leeds Publication, p.42-43.

There are victim's have make their complaint related to this case. The statement of dissatisfied shows the colleague is higher percentage of makes a complaint on sexual harassment. Besides that, there are others victim that make a complaint too. The table below showed us category about, frequency and percentage of the victim, which made a complaint about this case.

PLACE TO COMPLAINT BY VICTIM OF SEXUAL HARASSMENT¹⁶

(Utusan Malaysia, Monday, 8 December 2003)

Places/ Category	Frequency	Percentage (%)
Colleague	103	57.9
Friends	57	32.0
Human Resource	45	25.3
Family	39	21
Neglected	20	9
Organization	9	11.2
Counselor	4	5.1
Doctor	4	2.2
Police	4	2.2
Ministry Department	3	1.7

Based on the table given, these victims make their complaint through the categories of higher. Half of them like to complaint through their friends only because it easy to communicate and avoid from feeling humiliated. The others places that usually used by the victim is through the human resource, family, organization, counselor, Doctor, Police and Ministry Department. However, these victims do not made any complaint of sexual harassment because they worried from any threaten.

2.2 THE ILLEGITIMATE OF SEXUAL INTERCOUSE

Sexual intercourse is the consummation by a man and a woman through illegal relations or without marriage as based on hukum syara'. Means that they are not valid as husband and wife or both of them are *mukallaf* (enough condition based on Islamic side). Beside that, the consummation is not done by definition of "wati' Syubhat (the

¹⁶ Dr. Cecilia Ng. 2003. "Program Pendidikan Mewujudkan Kesedaran Ramai" Utusan Malaysia, Monday 8 December. P. 6.

suspicion of consummation).¹⁷ *Zina* includes sexual intercourse between a man and woman not married to each other. It therefore applies both to adultery (which implies that one or both of the parties are married to a person or persons other than the ones concerned) and to fornication, which, in its strict signification, implies that both parties are unmarried. The law of marriage and divorce is made easy in Islam, so that there may be less temptation for intercourse outside the well-defined incidents of marriage. This makes for greater self-respect for both man and woman. Other sex offences are also punishable, but this section applies strictly to *Zina* as above defined.¹⁸

Generally, in a modern penal system on sexual intercourse outside marriage through consenting adults is not considered as a crime. This sexual freedom is completely unknown to all revealed laws. The Mosaic, the Christian, and the Islamic laws themselves all forbid this type of sexual relations outside marriage and having its own punishment on that.

However in Islamic law, the rulings are more signified to moral values, which unlawful intercourse is one of the grave crimes falls under *hudud* punishment. This shows to us a main difference between Islamic law and western legal system. The consequences of sexual intercourse out of marriage give bad influence to us, which is stated in the Holy Quran that prohibited the act and any circumstance that leads to it as we read.

¹⁹ (ولا تقربوا الزنى إنه, كان فحشة وساء سبيلا.)

“Nor come nigh to adultery: for it is a shameful (deed) and an evil opening the road (to others evil).”²⁰

¹⁷Haji Sa'id Hj Ibrahim, “*Qanun Jinayah syarriyah dan Sistem kehakiman dalam Perundangan Islam berdasarkan Quran dan Hadith*”, 1996, Darul Ma'rifah Kuala Lumpur, p.25

¹⁸ ‘Abdullah Yusof Ali, ‘*The Holy Quran Original Arabic Text with English Translation & Selected Commentaries*, 2000, Saba Islamic Media sdn. Bhd, p. 421.

¹⁹ Holy Quran, Surah Al-Isra' verse 32.

²⁰ Abdullah Yusof 'Ali, ‘*The Holy Quran Original Arabic Text with English Translation & Selected Commentaries*’, 2000, Saba Islamic Media Sd. Bhd, p. 339.

This problems will destroys the family structure and against the interests of the children had born or to be born. Clearly, the sexual intercourse will make the structure of family in unperfected situation because of these unlawful relations. The consequences also will influence the children who will not understand these situations. All religions also prohibited this sexual intercourse but not specified like Islam. From verse of Al-Quran showed the prohibited relations of sexual intercourse out of marriage deeply. It is because the consequences of the sexual intercourse will bring the hierarchy of community fall.

Although jurists have their own definition by sexual intercourse but majority of them agreed that the main element in this crime is unlawful intercourse. The most comprehensive definition is given by the Hanafi School which stated: Unlawful sexual intercourse which takes place between a consenting man and woman in *dar al adl* when committed by those who abide by Islamic law, when there is no legal right (to it) or the semblance of such a right (*al- milk or shubhat al- milk*). It follows that any sexual relationship between a man and woman, which does not constitute a *zina* hence, it is not punishable by *hadd* but it would involve another category of punishment.²¹

In Islam, there are clear rules related to the consummation between man and woman, especially regarding to the sexual intercourse (consummation between man and woman without legal relations or without marriage). Based on Al-quran, Surah An-nur verse 24 Allah SWT state to the effect that:-

(الزانية و الزاني فاجلدوا كل واحد منهما مائة جلدة:²²)

“The woman and the man guilty of adultery or fornication, flog each of them with hundred stripes.”²³

²¹ Dr. Abdul Rahman Awang, *“The status of the Dhimmi in Islamic Law.”*1994, International Law Book services, p. 121-122.

²² Holy Quran, Surah An- Nur, verse 2.

²³ ‘Abdullah Yusof ‘Ali, *The Holy Quran Original Arabic Text with English Translation & Selected Commentaries*,2000, Saba Islamic Media Sdn. Bhd, p. 421.

There are a lot of definitions of sexual intercourse by Fuqaha in their views. As-Syarazi from Syafie' School defined that sexual intercourse is consummation by a Muslim man living in the Islamic country with a woman without legal relation, and without his entitle in this situation, he is sound mind, *baligh*, free to make a choice and know that thing is prohibited.²⁴

Imam Al-Kasini from Hanafi School giving his definition in sexual intercourse as unlawful consummation with alive woman, based in his own choice, in the Islamic country that obeyed Islamic ruling, without his entitled and without lawful relations.²⁵

Besides that, Ibn. Qudamah from Hanbali School defined that illegitimate sexual intercourse is a consummation with a woman at the place of woman without legal relation and suspicion.²⁶

Based on *fuqaha* definition of illegitimate sexual intercourse showed that it prohibited in Islam even there are different definition is appear among them but the meaning is still the same. However the most important that we should remind here is, the consummation without legal relation or sexual intercourse is prohibited in Islam.²⁷

TYPES OF SEXUAL INTERCOUSE OUT OF WEDLOCK

Sexual intercourse can be divided into two types: the types such following below:

(a) ***Zina Muhsan***

Zina Muhsan mean both of man and women have been marriage before and done with the legal consummation.²⁸

(b) ***Zina Ghairu Muhsan***

Zina ghairu Muhsan means in the situation of man and woman, have been not marriage before and after the consummation. They making consummation with unlawful or legal relation.²⁹

²⁴ Al-syirazi, Al-Muhadhahabab, Jld. 2, hlmn 266

²⁵ Al-Kasini, op.cit Jld.7, hlmn 33

²⁶ Ibn-Qudamah, Al-Mughni, Jld.9, hlmn 54.

²⁷ Paizah Haji Ismail, "*Undang-Undang Jenayah Islam di Malaysia*", 1996, Dewan Pustaka Islam, p.174.

²⁸ Kifayah Al-akhyar: 2/178

In others circumstances, the sexual intercourse also can be known in situation when a man and woman are sound mind, puberty (*baligh*), freedom and did not get marriage in the moment of getting the consummation.

2.3 RAPE

Rape is the consummation between man and woman, which happen with coercion from man without her willingness. Rape also can be defined by a willingness of that woman but at the same time she is worried from any violence of that man. This willingness also can be called as willingness under coercion. In other situation, rape also is as called willingness from woman but she is misunderstood the consequences related to the action. An action by “entering” (make a consummation) with a woman to fulfill the condition of consummation also can be called a rape. The accused person can be arrested regarding to the law. This law did not allow the arrested person to be guaranteed before hearing.³⁰

A man is said to commit “rape” that, except in the case hereinafter accepted, 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.

²⁹ Kifayah Al Akhyar: 2/178.

³⁰ Mohd Fuzi Harun Roseli Ahmad, " *intisari Kanun Kesiksaan*", Dewan Bahasa dan Pustaka", 1993, p. 181-182.

(f) With or without her consent, when she is under sixteen years of age.³¹

Of all the crimes that women are victim or prey to, none is probably more humiliating and damaging to the self-esteem than rape. An empirical study of the impact of rape reveals psychological symptoms such as anxiety, depression, sexual dysfunction, and social disruptions. Rape is also said to affect the mental health of the victim, example cognitive change including the shattering of central beliefs. According to Kelly, in a period immediately after the rape, women have to cope with feelings evoked by the incident. The following ways of feeling (in order of frequency mentioned) were recalled by those who had experienced rape: upset, numb, dirty, ashamed, angry, wanting to forget, abused, guilty, and fearful.³² Several studies have confirmed the existence of trauma from the rape problem. According to Burgess and Holstorm, "This syndrome has two phases: the immediate or acute phase, in which the victim's lifestyle is completely disrupted by the rape crisis, and the long-term process, in which the victim must reorganize this disrupted lifestyle.

Under Islamic law, rape is considered as one of the most serious crime. It is not merely an offence against the individual but is viewed as a crime against the honour and integrity of women. It ruins the family reputation, which consequently leads to chaos, confusion, loss of peace of mind and heart, disrupting the system of life, and therefore, deserves capital punishment in order to deter others.

Islamic law has promulgated as a set of punishment, which Allah SWT planned in the best interests of humanity. The judge is authorized to determine the punishment, which he finds appropriate to the circumstances of the case. Evidence from Islamic *fiqh* literature and also from generally accepted *fatawas* issued by Islamic contemporary councils and individual's scholars, points to the fact that punishment for rape. The dangerous character of the crime, as viewed by the majority of jurists, is that rape certainly cannot be considered to be lesser than *hiraba*. *Al-Dasuqi*, a great Maliki jurist is of the force of arms, the act will be deemed as

³¹ Penal Code (Act 574), May 2000. International Law Book Services, p. 135.

³² Liz Kelly, "Surviving sexual Violence", (Polity Press, Cambridge, 1988), p. 170

committing *hir aba*.³³ Egypt Mufti issued a fatwa that convicted rapist can be sentenced to death, as the crime is in line with the nature of *hir aba* as it is vital to curb the crime. Under Egyptian Criminal Law, a convicted rapist can be sentenced to death.³⁴

In recent years, the number incidents of rape have increased significantly in Malaysia especially Federal Territory, regarding to Wilayah Persekutuan. It is reported that the number of rape cases has doubled in this past 12 years which students have make up a quarter of the victim's. Most of the rape cases were involved people who were known by victims. They were new acquaintances, boyfriends, friends or members of the family.³⁵

Statistic obtained from the police showed that, the raping case usually happened in in abandoned buildings, parks, lonely estates, hotel room, public transport and private vehicles, and even in their own home. Public places like shopping complexes or bus stop are also unsafe as they have proved to be popular pick-up points.³⁶ Briefly, it always appears everywhere although the place is safety.

There were many reasons behind the increasing of this case. Dato' Zaman Khan, the Director of Criminal Investigation Department (as he was then) stated that one of the reasons could be are girls or woman should be aware of their rights and come forward to lodge reports. The Malaysian Government's move in amending the law to charge anyone who had sex with a girl below 16 for statutory rape could also be a factor. Previously the age was 14³⁷. These incidents mean that more or more women will suffer as a result of this crime. Rapes within relationships are also happening everywhere, but it is a hidden crime- one which both rapist and victim find hard to face. This problem will causes other problems like the victims may run away from home and become involved in prostitution to support them or become hooked on drugs, even commit suicide. The Police Department in Special Investigation Unit (Sexual Offences) currently had gathered data, which may lead to the identification of

³³ Abdul Rahman Doi, Shari'ah: *The Islamic Law*(A.S Nordeen, Malaysia, 1984

³⁴ Article 290 of Egypt's Criminal Law Act, 1980

³⁵ The Star, March 4, 1997.

³⁶ The Royal Malaysian Police Department's statistics on Rape, 1997.

³⁷ Utusan Malaysia, March 4, 1993.

certain patterns that enable them to recognize the persons who have tendencies to commit rape. They are not ruling out possibilities that estranged spouses, and men under the influence of alcohol and drug to be the main culprits in this type of crime. So far, no other country has reported success in getting a fixed pattern.

The study of rape has not been the priorities of criminologists until recently. However, a good deal of theory and research has been devoted to this form of crime in the last two decades. In the United States, one major direction has involved macro-level theorizing about rape rates, both cross culturally and within the country itself. One macro-level theory holds that rape is one of the means employed by males to maintain sexual inequality. Susan Brownmiller in her *Against Our Will* book, contended that from prehistoric times to the present, rape has been one of the means of intimidating women,” keeping them in their place,” and preserving sexual inequality.³⁸

There are three currently popular theories of rape: feminist arguments, social learning theory, and evolutionary theory. First, the feminist arguments are a social-structural argument, whereas the latter two are accounts of the behaviour of individual rapists (or non-rapists). While social and feminist theories overlap to so some degree, they differ in emphasis. The latter has broad features of western culture- in particular, socioeconomic exploitation of woman- as encouraging rape, the former stresses cultural traditions that are more directly linked to aggression and sexuality as major causes of rape. Learning theories are also more receptive to the view that rape often reflects sexual desires rather than essentially non-sexual interests in exploiting women. Learning arguments also often contend that violent pornography plays an important role in linking physical aggression and sexuality in the minds of males.

Evolutionary theory is the least known and most controversial of the three arguments. According to Ellis, advocates of this theory consider “rape to be an act emanating from natural selections pressure for males to be more eager than females

³⁸ Susan Brownmiller, *Against Our Will*, (Simon and Schuster, New York,1975).

for copulatory experiences with a wide range of sexual partners, and their use of forceful tactics to satiate their sexual desires.³⁹

If we make a comparison between our country and the western country, there are many differences such as in aspects of cultural, norms, attitude and so forth. In the western country the sexual relation act as normal things and make the people would comfortable with that action. However, in our country, it is definitely wrong side and we are not allowed to do so even in several religion and races. So, the case of rape in western country actually is a normal case because the women are willing to do differ from our country where is absolutely nefarious act and immoral value.

2.4 SODOMY/ HOMOSEXUAL (LIWAT) AND MUSAHAQAH (LESBIAN)

Liwat means sexual relations between male and male. *Musahaqah* means sexual relations between female persons.⁴⁰ Besides that, *liwat* means make an actions of consummation in the anus of person whether with man or woman except in the anus of his wife.⁴¹ *Liwat* also can be called as homosexual relations. In the Oxford Advanced Learner's dictionary, homosexual means adjective of sexually attracted only to people of the same sex oneself. Based on Islamic law, *liwat* is entered penis into the anus of man or woman.⁴² In the other side, *liwat* mean sexual activity with a member of one's own sex.

Based on Surah Al-A'raf verse 81, 82 and 83, the homosexual action has been occurred in the period of Nabi Luth. It showed the homosexual still occurred even there is a ruling or guideline for them in order to not involve in such offence. In the period of Nabi Luth Allah SWT had given a punishment to the community who had been involved in these offences. Nowadays, the homosexual action can be seen in any place. For example, in western such as United States, the couple of homosexual man

³⁹Zaleha Kamaruddin Mahmud Sanusi and Nik Rahim Nik Wajis, *Woman, Rape and the Law: Comparative Perspectives*.

⁴⁰ Federal Territories Syariah Law Act 559(Syariah Criminal Offences) Act 1997,2003,International Law Book Services, p.7

⁴¹ Hj Sa'id Hj. Ibrahim, *Qanun Jinayah Syar'iyah dan Sistem Kehakiman Dalam Perundangan Islam berdasarkan Quran dan Sunnah*, 1996, Darul Ma'rifah kuala Lumpur, p.341.

⁴²Narizan Abdul Rahman, " *Isu-Isu semasa Bidangkuasa Mahkamah Syariah.Satu Soroton Dlm Kes Jenayah Syariah(Liwat)*," *Jurnal Syariah*, Julai 1999, Jld. 7, bil. 2, p.63-84.

or lesbian were allowed to live together as a life partner. This show on the lowest of their moral and identity. At the same time this action can be seen in the others countries included in our country. They usually as homosexual man being outside even they are not exposed themselves to the public.

The *liwat* or homosexual action had been decided by *fuqaha* whether it could be divided in type of *zina* or not. For them who said *liwat* as a *zina*, they are followed from what did prophet said and written by *Abu Musa Al-'Asy'*. He stated that:

(إذا أتى الرجل الرجل فهما زانيان.)

"If a man was made a consummation so they are made a sexual intercourse."

Second reason by them who told that *liwat* is a *zina* is because the physical and the aim of that action are similar to *zina*. At the same time, most of *fuqaha* such as Al-Kasini, Ibn Hazm and Al- Muhalla agreed that *liwat* is not a *zina*. It is because the community custom and norms was not deemed *liwat* is a *zina*. If the person takes an oath he will not committed in *zina* but after that he makes a *liwat* so his oath will not be invalid. They told that *liwat* is not a *zina* based on Hadis by Prophet:-

(إذا أتت المرأة المرأة فهما زانيتان)

*"If the woman made a consummation with a woman so both of them entered into sexual intercourse."*⁴³

The second group also stated that, based on opinion of companion, if *liwat* and *zina* is same so there are no differences of punishment. It is because the consequences of *zina* are different with *liwat*.

From above explanation it clears that *zina* and *liwat* is different. Even there are different opinions from *fuqaha* related to its definition but the similarity here only

⁴³ Hadis by Al-Baihaqi from Abu Musa.

included into one main point *liwat* prohibited in Islam. There are verse in Holy Quran that Allah said it is an offence.

Musahaqah(Lesbian)

Musahaqah or lesbian is an action to fulfill their passion between woman and woman.⁴⁴In the other situations *sahaq* (transsexual or lesbian) means a relation in the same gender of woman. All *Fuqaha* agreed and given their opinion that *sahaq* is a consummation of woman and woman. They also said *sahaq* or lesbian is the execrable with Allah. Our Prophet had stated that in his hadis:-

(إذا أتت المرأة فهما زانيتان)

*"If the woman made a consummation with a woman so both of them entered into sexual intercourse."*⁴⁵

Based on the Dictionary of law by L.B Curzon lesbian means female homosexuality but it is not a criminal offence.⁴⁶

So, from the explanation above it is clear that, lesbian or a consummation between women against woman is prohibited in all times. It is because this position definitely is opposed with our norms especially for our country where mostly were Muslim. This brings to the similarity's of homosexual or *liwat* where all the religion religions and provided that it was prohibited. It seems that to be out of the human norms.

Generally, Western Countries have been first exposure about the homosexuality and lesbians in the 1960s and 1670s.⁴⁷ The Woman and Gay Liberation Movements proposed a view of homosexuality as a social and political identity. For example, some lesbians argued that being a lesbian is a political act that challenges

⁴⁴ Hj. Sa'id hj. Ibrahim, "*Qanun Jinayah Syar'iyah dan Sistem Kehakiman Dalam Perundangan Islam Berdasarkan Quran dan Hadith*," 1996, Darul Ma'rifah Kuala Lumpur,p345.

⁴⁵ Hadis Riwayat Al-Bahaiqi from Abu Musa

⁴⁶ L.B Curzon, '*Dictionary of Law*', 1994, International Law Book Service, p. 225.

⁴⁷ Diane Richardson and Steven, "*Handbook of lesbian and Gay studies*," Sage Publication (London),2002 ,pg 2.

both the norm of heterosexuality and man's dominance. To be a lesbian is to choose live a life apart from men and to make women the center of one's personal and social life.⁴⁸

From that explanation above the development of the homosexual and lesbian is come from the Western Countries. They declared of their relation and to put their identity into other categories of human. Actually social scientist were also begin to develop a social approach homosexuality as either normal or abnormal, but considered the way homosexual and lesbians created their own identities and subcultures in a hostile society. It seems to be the community has been accepted the categories of lesbians and homosexuality human. Definitely, clear here, this problem is not the norms of human. What we should said it is out of human life and no more categories for the third human like them.

From the observation by British Sociologist, Mary McIntosh, people were said to be born heterosexual, homosexual and lesbian.⁴⁹ Under Islamic perspective definitely there is no other human beside of man and woman. From man and woman will be born the son. This is opposed with the perception of homosexual and lesbian said that human supposed to be born in three categories that is heterosexual, homosexual and lesbian.

In Holy Quran there is an evidence Allah created the human from one man and one girl. In Surah An-Nisa verse 1, Allah stated that:

(يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ. إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا.)⁵⁰

“O Mankind! Respect (and /fear) your Guardian-Lord, who created you, from a single person (Adam), created his mate of similar nature, and from the two of them spread (like seeds) Countless men and woman:- Respect and fear Allah, through whom you

⁴⁸ Diane Richardson and Steven, *“Handbook of lesbian and Gay studies,”* Sage Publication (London), 2002, p.4.

⁴⁹ Diane Richardson and Steven, *“Handbook of Lesbians and Gay studies”* Sage Publication, 2002 ,pg 4.

⁵⁰ Holy Quran: Surah An-Nisa verse 1.

demand your mutual (rights), and (respect) the wombs(that bore you): For Allah always watches over you."⁵¹

From the verse of Holy Quran Allah creates the human based on Adam and Eve (Hawa). They are the first person living in this world. Then this process will continue until now. It means that, a new generation will be developed until the day of hereafter. But the main point here is the human was born from man and woman not from man and man or from woman and woman. So, here we used as the evidence to deny that people were born to be heterosexual, homosexual and lesbians. No other generation will be created in this world except born from man and woman. Men are created for woman and women are created for a man. That's the nature of life.

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⁵¹ 'Abdullah Yusof 'Ali, *The Holy Quran Original Arabic Text with English Translation & Selectyed Commentaries*, 2000, Saba Islamic Media Sdn. Bhd. , p. 100.

3.0 CHAPTER THREE

3.1 INTRODUCTION

In this chapter it will discuss on the punishment of the sexual offences based on Islamic perspective, jurist's opinions and the laws of our country itself. The main point of this chapter is to show to the readers about the punishment of the sexual offences. It will be focused on the punishment of sexual harassment, sexual intercourse out of wedlock, rape, *liwat* and *musahaqah* (homosexual and lesbian).

3.2. PUNISHMENT FOR SEXUAL INTERCOUSE OUT OF WEDLOCK

Sexual Intercourse as sort of sexual offences is the problem that we are facing today. In many places there are cases reported based on sexual intercourse such as incest, *zina* and so forth. This is the scenario today that the human cannot think appropriately and positively before doing something. But the main point in this chapter is related to the punishment of sexual intercourse. Whether there are specific laws or any jurist's opinions for the punishment of sexual intercourse especially in Federal Territory or in other states generally where the problem problem always has been occurred. So, there is punishment related to the sexual intercourse.

The Holy Quran had laid down its punishment as follows:

52 (الزانية و الزانى فاجلدوا كل واحد منهما مائة جلدة)

*The adulterer and the adulteress, scourge ye each one of them (with) a hundred stripes. And let not pity for the twain withhold you from obedience to God, if you believe in God and the Last Day. And let a party of believers witness their punishment.*⁵³

The earlier revelation concerning the crime of *zina* (sexual intercourse) was as follow:

⁵² Holy Quran, Surah An- Nur verse 2.

⁵³ 'Abdullah Yusof 'Ali *The Holy Quran Original Arabic Text with English Translation & Selected Commentaries*, 2000, Saba Islamic Media Sdn. Bhd, p. 421.

“And as for those of your women who become guilty of immoral conduct, call upon four from among you who have witnessed their guilt; and if these bear witness thereto, confine the guilty women to their houses until death takes them away or God opens for them a way (through repentance).

And punish (them) both of the guilty parties; but if they both repent and mend their ways, leave them alone: for, behold, God is an acceptor of repentance, a dispenser of grace.”⁵⁴

The verse from Al-Quran clearly stated the punishment for the adulterer and adulteress for us to know and think. From the words of “no pity” is telling us there is no sympathy to punish them according to the Islamic rules. It is because the punishment of adultery or sexual intercourse to make sure the others community does not try to involved in the sexual intercourse offences. Actually Islam is a fair religion to the entire human because the rules must be followed intend to prevent from any offences and make their believers become obeyed to what their God stated that.

Based on Quran, Surah An-Nisa verse 6-15, God stated that even there are list of punishment of the sexual intercourse or *zina*, however the Almighty has power to accept the repent from His believers. It also shows that Islam is the acceptance religion from any offences but they should be repent from any offences especially according to Hukum Syara’. Islam is the fair and beautiful religion to the entire human because of the acceptance from their Allah SWT to His believers.

According to some commentators stipulated these two verses have been abrogated by Surah An-Nurr verse 2, which henceforth becomes the only basis for punishment of sexual intercourse (*zina*). It is clear that of *ta'zir* and it evolved and remained to become a *hadd* punishment at later stage. The form of *hadd* however depending to the material status of the culprit. This opinion expressed by Ubadah, Al-hasan b. Al-Basri and Mujahid. As for the kinds of punishment for *zina* or sexual intercourse it can be summarized as follows

⁵⁴ Al-Quran, Surah An-Nisa verse 6-15. & ‘Abdullah yusof ‘Ali, “*The Holy Quran Original Arabic Text with English Translation & Commeantaries*” 2000, Saba Islamic Media Sdn. Bhd, p. 101.

a. Flogging

One hundred lashes are prescribed for the unmarried male or female who commits fornications. This is in accordance with Surah An-Nurr verse 2 above. There is no disagreement among the jurists over this issue.

b. Stoning to death (al-rajm)

This rule was prescribed by the *sunnah* for the married male and female. Hence it became the consensus of the Companions. It is a subject of agreement among the scholars that the punishment of stoning is only done to the married (*muhsan*) male or female and there are some requirements to be *muhsan* which are the subject of disagreement among the jurists.

Moreover, the Qura'an commands that the execution of these two punishments, for example flogging and stoning, should be carried out in public by the authority in order to deter potential offenders. This can be understood from the last portion of the verse which says that "let a party of believers witnesses their punishment." Apart from that it should be borne in mind that Qur'an stipulates the direct evidence of four witnesses, instead of two witnesses, which is required in all other judicial cases, as a *sine qua non* of conviction.

On the other views, if majority has decided stoning so flogging is no more required; otherwise it would cause double punishments on the same person for the same offence, something that would be contrary to the principle of punishment. But the *Hanbali* and *Zahiri* maintained that the culprit should still be flogged and then stoned to death.

c. Banishment

The punishment is prescribed for the unmarried offenders. It means that the culprit should be expelled from the place where he had committed the act for a period of one year. This issue of banishment including flogging is a matter where have the

difference among the jurists opinion. The majority held that addition to flogging is prescribed from Sunnah. This opinion was reported from the Four Guided Caliphs and shared by al-Thawri, Ibn Abi Layla, Shafie'e, Abu Thawr and others. The Hanafi jurists held that there will be no banishment includes flogging except in the cases it would be *ta'zir* rather than *hadd*. Other views, Maliki jurists and Awza'I maintained that the banishment is only for the male. This is because the female would need special care and protections. After examining the evidence of each school, seems that the majority view is more acceptable. However, according to some, the idea of banishment, as in the case of *hirabah*, could signify and properly include imprisonment as the term literally implies.

3.3 PUNISHMENT FOR RAPE

Rape is also one of the problems that we have facing today. Maybe the human make an action for this scenario as the new trendy. In the Western Country the rape case is familiar because it won't be called as rape case. The reason is both of man and women are giving their consent to the act especially the women. However in our country is still prohibited and definitely was unfamiliar. So there are guideline to make the punishment to all the rapist based on Islamic law and the others laws. This study will list down the law best on the opinion from jurist that they used to punish at the past period and also specific law for the punishment of the rape case in our country today especially in the area of Federal Territory.

Malik said:

“The position here are about a woman who is found pregnant and has no husband and she says, ‘ I was forced’, or she says ‘ I was married’, this word is not accepted from her and the *hadd* is inflicted on her unless she has a clear proof of what she claims about the marriage or that she was forced or she comes bleeding if she was virgin or she calls out for help so that someone comes to her and she is in that state or which resembles it of the situation in which the violation occurred.” He said, “if she does not produce any of those, the *hadd* is inflicted on her and what she claims of that is not accepted from her.”