Proceeding of International Conference on Sharia and Law (ICOSLAW) 2026
Navigating Women's Roles in Legal Development
Vol. 3, No. 01 (2026)

The Application of *Ne Bis* In *Idem* in Domestic Abuse and Neglect Cases: Analyzing Legal Protection and Women's Children's Rights

Anggi Purnama Tradesa
Universitas Nahdlatul Ulama, Nusa Tenggara Barat, Indonesia
anggitradesa9@gmail.com
Agis Setiawan
Universitas Nahdlatul Ulama, Nusa Tenggara Barat, Indonesia
ghelanagissetiawan@gmail.com
Angga Dinata
Universitas Mataram, Indonesia
anggadinata896@gmail.com

Abstract:
The principle of Ne Bis In Idem constitutes a fundamental safeguard within Indonesia's criminal justice system, ensuring that no individual is prosecuted twice for the same criminal act after a final judgment, as stipulated in Article 76 of the Indonesian Criminal Code. However, its application becomes problematic in cases of domestic violence involving continuing offenses, particularly when physical abuse and domestic neglect arise from the same sequence of events. This study examines whether such acts should be regarded as a single criminal event subject to Ne Bis In Idem or as legally distinct offenses requiring separate adjudication.This research employs a normative juridical method using statutory, conceptual, and comparative approaches. The analysis demonstrates that determining the applicability of Ne Bis In Idem should not rely solely on the formal similarity of criminal charges but must consider the material identity of the offense, including the perpetrator, time, place, motive, and factual sequence of events. Domestic assault and domestic neglect possess different legal characteristics and produce distinct forms of harm. Physical violence causes immediate bodily and psychological injury, whereas neglect constitutes a continuing offense that results in prolonged economic deprivation and threatens the welfare of women and children. Consequently, treating both acts as the same criminal event may undermine victims' access to justice and weaken legal protection. Comparative analysis indicates that several jurisdictions adopt

a transactional approach, recognizing separate prosecutions where different harms arise from related criminal conduct. Based on these findings, this study proposes three models for balancing legal certainty and victim protection: Harm Differentiation Analysis, requiring judges to distinguish the legal harms addressed in each prosecution; Prosecution Integration, encouraging prosecutors to consolidate related offenses through joinder of charges; and Victim-Oriented Interpretation, prioritizing the protection of women and children when interpreting continuing domestic violence cases. The study further recommends the issuance of specific judicial guidelines concerning the application of Ne Bis In Idem to continuing offenses, enhanced gender-sensitive training for law enforcement officials, and greater reliance on expert testimony regarding continuing delicts. These measures are expected to strengthen legal certainty while ensuring comprehensive protection of victims' rights within Indonesia's criminal justice system.

Keywords: Ne Bis In Idem, maltreatment, domestic neglect, domestic violence, protection of women and children, legal certainty.

Introduction

The doctrine of *ne bis in idem*, which is doctrinally rooted in the concept of *res judicata* within the Roman legal tradition, represents a significant part of the most essential foundations of the criminal justice system in civil law jurisdictions, including Indonesia.[1] Philosophically, this principle serves not merely as a procedural rule but also as a safeguard protecting individuals against arbitrary and excessive exercises of state prosecutorial power. Without such a limitation, individuals would remain in a condition of perpetual legal uncertainty, whereby the State, through its prosecutorial authorities, could repeatedly prosecute the same person for the same criminal event until achieving a decision that satisfies particular interests or secures the desired conviction.

Within the Indonesian legal system, this principle is expressly embodied in Article 76 as regulated within the Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana*/KUHP), which stipulates that no person may be prosecuted twice for the same

[1] Kurniawan Tri Wibowo, *Legal Aspects in the Digital World* (Sada Kurnia Pustaka, 2025).

criminal act after a final and legally binding judgment (*inkracht van gewijsde*).[2] The primary objective of this provision is to ensure legal certainty (*rechtszekerheid*) while protecting individuals from repeated criminal prosecution. Nevertheless, its practical application has become increasingly challenging in cases involving continuing offences (*voortgezette handeling*), particularly within the framework of domestic violence cases.[3]

Empirical evidence reveals that domestic violence represents rarely an isolated incident. Rather, it constitutes a continuous pattern of domination, coercion, and control exercised by the perpetrator over the victim. Domestic neglect, for instance, is often inseparable from acts of physical violence and should instead be understood as part of a continuing offence intentionally designed to weaken the victim's economic independence and psychological resilience.

Existing legal scholarship on the implementation of the *ne bis in idem* doctrine in Indonesia generally continues to be confined to a rigid formalistic approach. Most studies concentrate primarily on procedural requirements, particularly the issuance of a final and binding court decision (*inkracht*) and a narrow textual interpretation of Article 76 of the Criminal Code. Consequently, a significant research gap persists because relatively little attention has been devoted to the distinctive nature of continuing offences in domestic violence cases. Current academic discourse frequently fails to integrate criminal law doctrine with the sociological realities of gender-based violence, where the concept of "the same offence" (*idem*) should be interpreted through a substantive rather than merely formal perspective by considering the continuity of

[2] Mochammad Mahdi Abyan And Bambang Panji Gunawan, "Self-Defense Under Law Number 1 of 2023 concerning the Criminal Code," *Jurnal Reformasi Hukum: Cogito Ergo Sum* 8, No. 2 (2025): 22–29 Https://Doi.Org/10.51804/Jrhces.V8i2.17107.
[3] S H Rudi Margono, *"Rubber-Stamp" Provisions and Legal Certainty: A Critique of Formal Offenses* (Profesor Rudi Margono, 2026).

motive, conduct, and the enduring traumatic consequences experienced by victims.[4]

The challenges associated with handling domestic violence cases arise not only during judicial proceedings but also at the investigative stage. In practice, penal mediation and police discretion that prioritize family-based settlements frequently oversimplify domestic violence as a single isolated incident. Such an approach risks depriving victims of access to justice for the entire series of criminal acts they have endured. Furthermore, partial settlements reached during the investigative process may create legal uncertainty, as subsequent acts of domestic violence may later be regarded as having already been "resolved" through earlier reconciliation agreements.[5]

Similarly, the application of restorative justice mechanisms for cases involving domestic violence under Prosecutor Regulation No. 15 of 2020 has generated considerable debate. Although restorative justice is intended to restore social harmony, its practical implementation is frequently constrained by structural obstacles, administrative burdens, and patriarchal cultural norms that pressure victims into reconciliation. Such extra-judicial settlements may ultimately weaken victims' legal position and obscure the reality that domestic violence commonly constitutes a continuing criminal offence requiring comprehensive legal protection rather than merely partial family-based resolutions.[6]

Normatively, the *ne bis in idem* doctrine as regulated under Article 76 of the Criminal Code reflects the philosophical a dedication to ensuring legal certainty and the protection of defendants against arbitrary prosecution. However, its application requires strict compliance with both subjective and objective

[4] Whindya Khodijah, "The Effectiveness of Discontinuing Prosecution for Children in Conflict with the Law through a Restorative Justice Approach" (Universitas Islam Sultan Agung, 2025).
[5] A N A Fitriyani, "Police Authority to Terminate Investigations in Domestic Violence Criminal Cases" (Universitas Muhammadiyah Magelang, 2021).
[6] Arico Novisaputra, "Arico Novisaputra, "Implementation of the Discontinuation of Prosecution Based on Restorative Justice in Domestic Violence Criminal Cases (Case Study: Indragiri Hilir District Attorney's Office)" (Sultan Agung Islamic University), 2025).

identity requirements. In domestic violence cases, these technical requirements are often misunderstood because law enforcement authorities tend to focus narrowly on the formal identity of the alleged act while disregarding the substantive characteristics of continuing offences that extend beyond the elements of a previously adjudicated offence.[7]

This problem is exacerbated by the absence of clear judicial guidelines within Indonesia's criminal justice system concerning the circumstances under which domestic violence should be regarded as a single continuing criminal event. Consequently, law enforcement frequently fails to tackle the underlying factors contributing to domestic violence and may inadvertently provide perpetrators with opportunities to invoke the *ne bis in idem* doctrine inappropriately as a means of avoiding criminal responsibility.[8]

Law enforcement authorities therefore face a difficult dilemma between preserving the consistency and validity of the *ne bis in idem* doctrine as a guarantee of fundamental human rights and fulfilling the State's obligation to provide comprehensive protection to victims under Law Number 23 of 2004 on the Prevention and Elimination of Domestic Violence. In many cases, judges focus primarily on the similarity of the offender and the time of the offence without examining whether the alleged conduct produces distinct legal consequences and different physical or psychological harms. This limited understanding of continuing offences reduces the effectiveness of victim protection and enables perpetrators to exploit procedural loopholes to evade accountability.[9]

This study seeks to reconcile the rigid formalism of criminal law with the urgent need to strengthen legal protection for victims

---

[7] Muhammad Fajar Hidayat et al., "Analysis of the Ne Bis In Idem Principle in Indonesian Criminal Procedural Law," Journal of Legal Studies and Public Policy / *E-Issn: 3031-8882* 1, No. 2 (2024): 250–58. Https://Doi.Org/10.62379/Mxyt5z23

[8] Agus Wibowo, "International Criminal Law," Yayasan Prima Agus Teknik Publisher, 2025.

[9] Rudi Margono, *The Victim Speaks: Victimology in the Criminal Justice System (Professor Rudi Margono, 2026)*.

of domestic violence. Unlike previous studies that primarily emphasize legal certainty for defendants, this article adopts a transactional approach in interpreting the *ne bis in idem* doctrine. at maintains that Indonesia' s State bears a positive obligation under both domestic and international human rights instruments including the provision contained in Article 39 of Law No. 39 of 1999 on fundamental rights to prevent impunity that is disguised behind procedural formalities.

The originality of this study is reflected in its proposed interpretative framework, which integrates the sociology of law with the legal doctrine concerning material *ne bis in idem*. The study argues that material identity should not be determined solely by *locus delicti* and *tempus delicti*, but should also encompass the factual continuity (*factum*) of domestic domination. Accordingly, this research enriches existing legal discourse regarding progressive criminal law in Indonesia by demonstrating that a substantive interpretation of *ne bis in idem* strengthens, rather than undermines, legal certainty through the realization of substantive justice.

The present research is grounded in doctrinal legal analysis a normative juridical research method by integrating the legislative approach, conceptual approach, and case approach,[10] to examine the complexities of adjudicating domestic violence cases that intersect with the *ne bis in idem* doctrine. at article is structured around three main arguments: An Analysis of the Failure of Formalism this section highlights the limitations of legal formalism in addressing continuous offenses, specifically by comparing the impact of physical violence versus domestic neglect. From a doctrinal perspective, it is demonstrated that the disparity in the

[10] M Iqbal Asnawi, " "Implications of Recognizing Corporations as Subjects of Criminal Law in the National Criminal Code: A Study of Conceptual and Normative Aspects," International Journal of Demos (IJD), 2025. Https://Doi.Org/10.37950/Ijd.V7i4.581.

resulting legal harm confirms the absence of identity of the act (*idem*) in such cases.[11]

Human Rights Perspective Evaluation: This section examines judicial practices in Indonesia through the lens of protecting women and children. It finds that overly rigid judicial interpretations inadvertently create a space for perpetrator impunity, thereby undermining the spirit under Indonesia ' s Domestic Violence Elimination Law (UU PKDRT). Proposed Solutions: As a policy recommendation, this study proposes models for "Harm Differentiation Analysis" and "Prosecution Integration.".[12] This model provides practical guidance for prosecutors regarding the joinder of charges, and for judges in assessing *ne bis in idem* claims based on the integrity of the series of acts, the motive, and the continuity of the conduct.[13]

Based on the foregoing, this study affirms that legal certainty must not serve as a shield for perpetrators to enjoy impunity. Law that disregards substantive justice loses its essence as a guardian of human dignity; therefore, criminal law enforcement must transform into an instrument that prioritizes justice for vulnerable parties.

Discussion

Domestic Abuse and Neglect as the Same Incident *Idem* in Implementing the *Ne Bis In Idem* Doctrine

This discussion aims to determine whether domestic abuse and neglect occurring within a single series of events can be classified as a single criminal incident thereby invoking the ne bis in idem principle. In Indonesian Within the framework of penal law, the ne bis in idem doctrine serves as fundamental principle designed to

[11] Rai Mantili, " "Compensation for Non-Material Loss Arising from Unlawful Acts in Practice: A Comparison Between Indonesia and the Netherlands," De'jure: Scientific Journal of Law 4, No. 2 (2019): 298–321. Https://Doi.Org/10.35706/Dejure.V4i2.6460.
[12] R I O Irawan, R I O Irawan, "Reconstruction of Regulations Regarding Bail for Suspects and Defendants to Realize the Principle of Due Process of Law Based on Values of Justice" (Sultan Agung Islamic University, Semarang), 2025).
[13] Rijal Fa'iq Walid Abidi, dkk, ""The Law Enforcement Process in Criminal Cases Based on the Duties and Functions of Judges and Prosecutors in Indonesia," Adagium: Scientific Journal of Law 3, no. 1 (2025): 41–63. Https: 10.70308/adagium.v3i1.61.

ensure legal certainty by preventing an individual from being prosecuted or tried more than once for the same act following a final, binding judgment *inkracht van gewijsde*. This provision is enshrined in Article 76 of the Criminal Code (KUHP) and serves to protect the defendant's fundamental rights against the possibility of repeated state prosecution. The principle embodies both the concept of legal certainty *Rechtssicherheit* and a safeguard against the abuse of state authority in criminal law enforcement.[14]

Normatively, the legal analysis of Article 76 of the Criminal Code requires the cumulative fulfillment of several elements: first, the existence of a final and binding judgment *inkracht van gewijsd*; second, that the legal subject under examination is the same person; and third, that the case being examined concerns the same criminal incident *hetzelfde feit*. In practice, the most complex issue lies not in the identity of the perpetrator, but in the interpretation of the element of the "same incident" *idem*. Judicial practice often interprets this element formally-focusing merely on similarities regarding the perpetrator, time, or location-without considering the essential nature of the criminal incident in its entirety. Such a formalistic approach risks obscuring the primary objective concerning the function of *ne bis in idem* as a means to prevent double prosecution for a single, truly identical criminal incident, rather than to restrict the state from prosecuting other criminal offenses that possess distinct characteristics and legal consequences.[15]

The interpretation of the element of hetzelfde feit or "the same event" in Article 76 under the Criminal Code has drawn the attention of criminal law experts. Andi Hamzah explains that the principle The operation of the ne bis in idem doctrine depends not only the identity of the perpetrator but also the material similarity

[14] Joghinanda Raihan Febrianto, et. al., "Prosecutorial Discretion in Handling Criminal Cases Based on the Principles of Utility and Legal Certainty," Jurnal Media Akademik (JMA) 3, no. 10 (2025). DOI:https://doi.org/10.62281/g1f6ss61.

[15] Ir. Jeffry Yuliyanto Waisapi et al., A Comprehensive Guide to Criminal Trial Stages Under the New Criminal Procedure Code (Law No. 20 of 2025): A Perspective on the Rights of Defendants and Victims (Detak Pustaka, 2026).

of the criminal event under examination.[16] Thus, determining whether or not the idem principle applies cannot be based solely on the similarity of the charged statutory provisions; rather, it requires consideration of the nature of the act, the object of legal protection, and the resulting consequences. In this regard, Eddy O.S. Hiariej argues that the ne bis in idem doctrine must be applied cautiously to avoid obstructing law enforcement against other criminal offenses which, despite being committed by the same perpetrator, involve different elements of the offense and distinct legal interests.[17] This view indicates that material identity serves as the primary criterion for assessing whether the ne bis in idem doctrine can be applied.

Therefore, modern criminal law doctrine establishes the concept of material identity *materiële identiteit* as the primary basis for determining the existence of idem. Material identity encompasses not only the identity of the perpetrator subjectum litis, the time tempus delicti, and the place locus delicti, but also requires consideration of the similarity of legal facts factum, the object of legal protection rechtsbelang, the elements of the offense, the perpetrator's motive, and the legal consequences affecting the victim.[18] Thus, an assessment regarding idem cannot be made solely based on formal similarities; rather, it must take into account the substance of the entire series of criminal acts.

In domestic violence related cases, the material identity approach is crucial because the nature of the offense differs from that of conventional crimes. Domestic violence generally constitutes a pattern of abusea continuing offense rather than merely a single, isolated incident.[19] The perpetrator not only inflicts physical violence upon the victim but often compounds this with

[16] Hidayat, Aritonang, and Lavea, "An Analysis of the Ne Bis in Idem Principle in Indonesian Criminal Procedural Law DOI: https://doi.org/10.62379/mxyt5z23."
[17] Frans Reumi et al., *Frans Reumi et al., Indonesian Criminal Law (PT. Sonpedia Publishing Indonesia)*, 2026).
[18] AkSarudin Adam, "A Legal Review Of Determining Locus Delicti In Cyber Crime Investigations" (Sultan Agung Islamic University, 2025).
[19] Fatah Rafi Ardiansyah, Dkk *Domestic Violence As a Trigger For Other Criminal Acts (Nem Publisher)*, 2024).

economic neglect, psychological abuse, intimidation, coercive control, and the restriction of the victim's access to the necessities of life. These actions constitute forms of domination that are interconnected, yet each possesses distinct legal characteristics.

Indonesia's Domestic Violence Law, namely Law No. 23 of 2004 (UU PKDRT) explicitly distinguishes between the various forms of domestic violence. Article 5 prohibits any person from committing physical violence, psychological abuse, sexual abuse, and neglect occurring within household relationships. These provisions demonstrate that the legislature consciously classified each form of violence as a distinct criminal offense. Furthermore, Article 44 governs the criminal offense of physical violence, whereas Article 9 governs domestic neglect, which entails different elements of the offense.

This distinction is evident in the elements of the offense. Physical violence, as stipulated under Article 44 under Indonesia's Domestic Violence Elimination Law (UU PKDRT), centers on acts that inflict pain, injury, or health impairment upon the victim. This is an instantaneous offense, meaning the criminal act is deemed complete the moment the violence is committed. [20] Conversely, domestic neglect as stipulated in Article 9 within the legal framework established by UU PKDRT on domestic violence prevention and protection in constitutes a violation of the legal obligation to provide for the livelihood, care, maintenance, and financial support of family members. This offense is classified as a continuing offense, as the violation persists for as long as the perpetrator fails to fulfill said obligation.

These differing characteristics indicate that domestic abuse and domestic neglect involve distinct objects of legal protection. Physical abuse safeguards the victim's bodily integrity and health, whereas domestic neglect protects the victim's right to a decent standard of living, maintenance, economic well-being, and the continued growth and development of the child. The resulting legal

[20] Andi Hamzah, Specific Offenses (Speciale Delicten) in the Criminal Code (Sinar Grafika, 2015).

consequences also differ. Abuse inflicts physical injury, psychological trauma, and direct suffering upon the victim. Conversely, domestic neglect may undermine the fulfillment of basic rights by financial support, increased economic vulnerability for women, disruption to a child's education and development, and long-term social consequences. Therefore, even if both offenses are committed by the same perpetrator against the same victim within the same domestic relationship, they cannot automatically be classified as a single criminal event idem.

In the practice within Indonesia's law enforcement framework, the interpretation of the ne bis in idem principle still tends to be formalistic.[21] Law enforcement officials often place greater emphasis on the identity of the perpetrator, the timing, or the location of the incident rather than analyzing the substance of the criminal acts committed. Such an approach risks creating injustice, particularly in cases of domestic violence, which typically occur in a progressive and recurring manner. If the entire sequence of violence is viewed as a single criminal event without distinguishing the specific characteristics of each offense, there is a risk that the perpetrator cannot be held criminally liable for some of their actions. Ultimately, this situation can undermine the effectiveness of legal protections for women and children who are victims.

Within the framework of human rights protection, the state has a positive obligation to provide effective protection for women and children as vulnerable groups, within Indonesia's human rights framework established under Law No. 39 of 1999, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC), all of that have received formal ratification by Indonesia.[22] Therefore, the implementation of the ne bis in idem doctrine principle must

[21] Kimberly Hana Momongan, Ralfie Pinasang, and Anna Wahongan, "Application of the Ne Bis In Idem Principle to Supreme Court Judicial Review Decision No. 530 K/Pdt/2020 in a Land Dispute," Al-Zayn: Journal of Social Sciences & Law 4, no. 1 (2026): 6680–88.
[22] Amsori et al., *Legal Protection for Children and Women: A Restorative Justice Perspective (KBM Indonesia Publisher), 2026).*

not be interpreted in a formalistic manner that deprives victims of their right to legal protection against any form of suffering they have endured.[23]

By way of illustration, consider a husband convicted of physical violence against his wife under Article 44 of the Law on the Elimination of Domestic Violence (UU PKDRT). After the verdict became final and binding, facts emerged revealing that for several years, the perpetrator had also failed to provide financial support to his wife and children, abandoned the family without maintenance, and neglected his legal obligations as stipulated in Article 9 of the same Law. Under these circumstances, prosecuting the offense of domestic abandonment does not violate the principle of ne bis in idem. Although the perpetrator, the victim, and the legal relationship between them remain the same, the elements of the offense, the object of legal protection, the nature of the criminal act, and the resulting legal consequences differ. Therefore, the two offenses constitute distinct criminal incidents and may be prosecuted separately.

This analysis simultaneously addresses the research gap identified in the study. To date, the implementation of the ne bis in idem doctrine within domestic violence cases has been dominated by a formalistic approach that focuses solely on the identity of the perpetrator or the time and place of the incident. This approach risks fostering impunity for perpetrators if a series of violent acts is treated as a single criminal event, despite the fact that each form of violence possesses distinct characteristics and legal implications. The lack of clear guidelines concerning the implementation of the ne bis in idem doctrine to continuing offenses has hindered the optimal implementation of legal protections for women and children.

Based on the foregoing, it is evident that determining the existence of idem (the same matter) in domestic violence cases cannot rely solely on the identity of the perpetrator, the victim, or

23 Hidayat, Aritonang, and Lavea*, "Analysis of the Ne Bis in Idem Principle in Indonesian Criminal Procedural Law".*

the timeframe of the events. A comprehensive assessment is required, taking into account the material identity of the criminal offense including the elements of the offense, the object of legal protection, the nature of the act, and the resulting legal consequences. This approach enables judges to distinguish between multiple criminal offenses occurring within a single legal relationship that nonetheless possess distinct legal characteristics.

Thus, in the author's view, the legal analysis concerning the use of ne bis in idem in cases involving physical abuse and domestic neglect must be grounded in the material identity of the criminal event, rather than merely on formal identities such as the identity of the perpetrator, the victim, or the time of the incident. Differences regarding the elements of the offense, the object of legal protection, the nature of the crime, and the resulting juridical implications demonstrate that physical abuse and domestic neglect cannot automatically be classified as the same event idem. These findings underscore the study's novelty: that interpreting the ne bis in idem doctrine in domestic violence cases requires a "Harm Differentiation Analysis" approach one that distinguishes between forms of legal harm based on the specific legal interests protected by each respective offense. Through this approach, the ne bis in idem principle ensures legal certainty for the defendant without compromising the protection of women's and children's rights to effective legal protection. Furthermore, this approach serves as the conceptual foundation for formulating the model for applying the ne bis in idem principle, which will be discussed in the subsequent section.

A Model for Applying the *Ne Bis In Idem* Principle That Ensures Legal Certainty While Providing Effective Legal Protection for Women and Children as Victims of Domestic Violence

The analysis in the preceding discussion indicates that the primary issue concerning the implementation of the *ne bis in idem* doctrine within domestic violence cases lies not in the existence of Article 76 of the Criminal Code, but rather in the absence of clear

parameters for interpreting the element of the "same event" *hetzelfde feit*.[24] The provision merely prohibits double prosecution for cases that have reached a final and binding legal decision; it does not, however, specify the criteria for determining whether two criminal acts occurring within a domestic context constitute the same offense *idem* or two distinct offenses. Consequently, law enforcement practice often reflects a formalistic interpretation that focuses solely on the identity of the perpetrator, the victim, or the time of the incident, while disregarding the object of legal protection, the elements of the offense, and the resulting legal consequences.

This approach has the prospective to diminish the effectiveness of legal protections for female and child victims of domestic violence. Yet, the legal objectives set forth in Article 4 of Law No. 23 of 2004 concerning domestic violence elimination affirms that the the statutory objectives of the legislation are to prevent violence, protect victims, take action against perpetrators, and preserve the integrity of the household. Therefore, the implementation of the *ne bis in idem* doctrine must not focus solely on legal certainty for the perpetrator but must also take consider the victim's entitlement to protection and justice.

In light of these considerations conditions, this research suggests a conceptual framework to application of the *ne bis in idem* principle, constructed through a synthesis of the theory of legal certainty, the theory of legal protection, victimology theory, and the doctrine of material identity *materiele identiteit*. This model comprises three main components, namely: *Harm Differentiation Analysis*, *Integrated Prosecution Principle*, *and Victim-Oriented Justice Approach.*

The first component, Harm Differentiation Analysis, positions legal harm as the primary parameter in determining the presence or absence of *idem*.[25] Under this model, the judge does

[24] I Gusti Agung Ngurah, The Extinguishment of the Right to Prosecute and Execute Sentences in the Indonesian Criminal Justice System (Dira Media Kreasindo, 2025)).
[25] Sharfina Milla Atsari and Akhmad Budi Cahyono, "Determination of Non-Pecuniary Damages in Tort Cases in Indonesia, the Netherlands, and California (A Comparative

not merely compare the identity of the perpetrator or the time of the incident but also assesses whether the criminal offenses under review protect the same or different legal interests. Domestic abuse protects the victim's physical integrity and health, whereas domestic neglect protects family members' rights to livelihood, maintenance, and well-being. Given that the objects of legal protection differ, the two offenses cannot automatically be classified as the same *idem*.

The second component is the Integrated Prosecution Principle, a principle emphasizing the importance of coordination between investigators and public prosecutors from the very beginning of the law enforcement process.[26] If all forms of violence are identified during the investigation stage, all criminal offenses should ideally be comprehensively included in a single indictment. However, if following a final and binding judgment other criminal offenses are discovered that involve distinct elements of the offense and different objects of legal protection, prosecution remains permissible without violating the *ne bis in idem* doctrine.

The third component is the Victim-Oriented Justice Approach, an approach that positions women and children as subjects entitled to optimal legal protection.[27] Under this approach, any interpretation of the legal doctrine concerning *ne bis in idem* considers not only legal certainty for the defendant but also the victim's right to justice, redress, and protection from all forms of violence they have endured. This approach aligns with human rights protection principles as set forth in Indonesia's Human Rights Law No. 39 of 1999, CEDAW, and the Convention on the Rights of the Child.

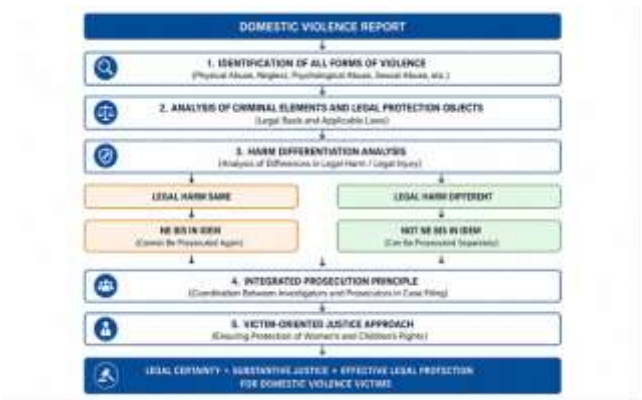
Analysis of Traffic Accident Judgments in Indonesia, the Netherlands, and California, United States)," *Lex Patrimonium 4, no. 3 (2025): 3..*

[26] Ahmad Sofian, "Strengthening Prosecutors' Capacity Through Coordination in the Investigation and Prosecution Processes Under the Draft Criminal Procedure Code: A Comparative Study of the United States, the Netherlands, and Indonesia," *PAMPAS: Journal of Criminal Law 6, no. 2 (2025): 183–217.*

[27] Muhammad Achyar *Hidayat*, Syahruddin Nawi and Kamri Ahmad, "Legal Protection for Children as Victims of Sexual Abuse from the Perspective of Victim Justice," *LEGAL DIALOGICA* 1, no. 2 (2026).

Operationally, this model can be implemented in three stages. First, law enforcement officials identify the elements of each criminal offense involved in a domestic violence case. Second, an analysis is conducted regarding the object of legal protection and the resulting legal harm to determine whether the two acts constitute the same offense *idem* or distinct criminal offenses. Third, the judge considers the balance between legal certainty and victim protection before applying the *ne bis in idem* doctrine. Through these stages, the application of the *ne bis in idem* principle becomes more objective and consistent, while also capable of delivering substantive justice.

Thus, the model proposed in this study does not alter the substance of Article 76 of the Criminal Code; rather, it provides interpretive guidelines regarding the element of the *same event* through a material identity approach. The originality of this study is reflected in development of a model that integrates *Harm Differentiation Analysis*, *the Integrated Prosecution Principle*, and *a Victim-Oriented* Justice Approach as parameters for determining the existence of *idem* in domestic violence cases. The model is expected to serve as a guideline for investigators, public prosecutors, and judges in applying the principle of *ne bis in idem* more consistently, thereby ensuring legal certainty without diminishing legal protection for women and children as victims.



Model of Implementation of the *Ne Bis In Idem* Doctrine in Cases Domestic Violence

This demonstrates that the implementation of the *ne bis in idem* doctrine within domestic violence cases cannot rely solely on the identity of the perpetrator, the victim, or the time of the incident; rather, it must begin by identifying all forms of violence that occurred. The subsequent stage involves analyzing the elements of the offense and the object of legal protection for each criminal act using "Harm Differentiation Analysis." If the analysis reveals that each criminal act results in the same "legal harm," the *ne bis in idem* doctrine applies. Conversely, whether the protected legal interest and the subject matter of legal protection differ, the case does not constitute the same matter *idem*, and prosecution remains permissible. Furthermore, the application of the Integrated Prosecution Principle ensures that all criminal offenses identified during the investigation stage are comprehensively incorporated into a single indictment, while the Victim Oriented Justice Approach guarantees that any interpretation concerning the operation of *ne bis in idem* takes into account the rights of women and children as victims. Thus, this model strikes the reconciliation of legal certainty for the defendant and effective justice protection the victim.

Conclusion

The operation of the *ne bis in idem* doctrine in domestic violence cases must be managed to prevent it from being exploited as a loophole for perpetrator impunity. Research findings indicate that physical abuse and economic neglect constitute distinct criminal offenses involving different objects of legal protection and resulting in different forms of harm; consequently, they cannot automatically be classified as the same event *idem*. Therefore, this study recommends adopting the Harm Differentiation Analysis, the Integrated Prosecution Principle, and a Victim-Oriented Justice Approach t to strengthen legal safeguards for women and children. These findings imply that law enforcement officials must move away from rigid, formalistic approaches and instead embrace substantive justice that prioritizes victim recovery.

Bibliography

Abidin, Rijal Fa'iq Walid, and Maulana Iqbal Fadhlurrahman. "Alur Penegakan Hukum Dalam Kasus Pidana Berdasarkan Tugas Serta Fungsi Dari Hakim Dan Jaksa Di Indonesia." *Adagium: Jurnal Ilmiah Hukum* 3, no. 1 (2025): 41-63.

Abyan, Mochammad Mahdi, and Bambang Panji Gunawan. "Pembelaan Diri Menurut Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana." *Jurnal Reformasi Hukum: Cogito Ergo Sum* 8, no. 2 (2025): 22-29.

Adam, Aksarudin. "Tinjauan Hukum Penentuan Locus Delicti Dalam Penyidikan Kejahatan Siber." Universitas Islam Sultan Agung, 2025.

Amsori, Sofa Laela, Meysita Arum Nugroho, *Perlindungan Hukum Anak dan Perempuan: Perspektif Keadilan Restoratif*. Penerbit KBMIndonesia, 2026.

Ardiansyah, Fatah Rafi, Hamidah Abdurrachman, and Kus Rizkianto. *Kekerasan Dalam Rumah Tangga Sebagai Pemicu Tindak Pidana Lainnya*. Penerbit NEM, 2024.

Asnawi, M Iqbal. "Implikasi Pengakuan Korporasi Sebagai Subjek Hukum Pidana Dalam KUHP Nasional: Kajian Aspek Konseptual dan Normatif." *International Journal of Demos (IJD)*, 2025.

Atsari, Sharfina Milla, and Akhmad Budi Cahyono. "Penentuan Ganti Kerugian Immateriil Dalam Perbuatan Melawan Hukum di Indonesia, Belanda, Dan California (Analisis Perbandingan Putusan Kecelakaan Lalu Lintas Di Indonesia, Belanda, dan California, Amerika Serikat)." *Lex Patrimonium* 4, no. 3 (2025): 3.

Febrianto, Joghinanda Raihan, and I Dewa Gede Dana Sugama. "Diskresi Jaksa Dalam Penanganan Perkara Pidana Berdasarkan Asas Kemanfaatan dan Kepastian Hukum." *Jurnal Media Akademik (JMA)* 3, no. 10 (2025).

Fitriyani, A N A. "Kewenangan Penghentian Penyidikan Dalam Perkara Tindak Pidana Kekerasan Dalam Rumah Tangga Oleh Kepolisian." Universitas Muhammadiyah Magelang, 2021.

Hamzah, Andi. *Delik-Delik Tertentu (Speciale Delicten) Di Dalam KUHP*. Sinar Grafika, 2015.

Hidayat, Muhammad Achyar, Syahruddin Nawi, and Kamri Ahmad. "Perlindungan Hukum Anak Sebagai Korban Pelecehan Seksual Dalam Perspektif Keadilan Korban." *LEGAL*

DIALOGICA 1, no. 2 (2026).

Hidayat, Muhammad Fajar, Rika Vintar Daluas Aritonang, and Hani Lavea. "Analisis Asas Ne Bis in Idem Dalam Hukum Acara Pidana Indonesia." *Jurnal Kajian Hukum Dan Kebijakan Publik| E-ISSN: 3031-8882* 1, no. 2 (2024): 250-58.

Irawan, R I O. "Rekonstruksi Regulasi Terhadap Jaminan Penangguhan Penahanan Bagi Tersangka Dan Terdakwa Dalam Mewujudkan Prinsip Due Process of Law yang Berbasis Nilai - Nilai Keadilan." Universitas Islam Sultan Agung Semarang, 2025.

Khodijah, Whindya. "Efektivitas Penghentian Penuntutan Terhadap Pelaku Anak Yang Melakukan Tindak Pidana Berbasis Keadilan Restoratif." Universitas Islam Sultan Agung, 2025.

Mantili, Rai. "Ganti Kerugian Immateriil Terhadap Perbuatan Melawan Hukum Dalam Praktik: Perbandingan Indonesia Dan Belanda." *Jurnal Ilmiah Hukum DE ' JURE: Kajian Ilmiah Hukum* 4, no. 2 (2019): 298-321.

Momongan, Kimberly Hana, Ralfie Pinasang, and Anna Wahongan. "Penerapan Asas Ne Bis In Idem Terhadap Putusan Peninjauan Kembali MA No. 530 K/Pdt/2020 Dalam Sengketa Pertanahan." *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 1 (2026): 6680-88.

Ngurah, D R D R S I Gusti Agung, and Agung. *Hapusnya Hak Menuntut Dan Menjalankan Pidana Dalam Sistem Hukum Pidana Indonesia*. Dira Media Kreasindo, 2025.

Novisaputra, Arico. "Implementasi Penghentian Penuntutan Berdasarkan Keadilan Restoratif Dalam Perkara Tindak Pidana Kekerasan Dalam Rumah Tangga (Studi Kasus: Kejaksaan Negeri Indragiri Hilir)." Universitas Islam Sultan Agung, 2025.

Reumi, Frans, Loso Judijanto, Rahmawati Rahmawati, Setiyono Setiyono, Thahir Thahir, Nurul Widhanita Y Badilla, and Rini Purwaningsih. *Hukum Pidana Indonesia*. PT. Sonpedia Publishing Indonesia, 2026.

Rudi Margono, *Korban Yang Bicara-Viktimologi Dalam Sistem Peradilan Pidana*. 2026.

———. *Pasal Karet Dan Kepastian Hukum-Kritik Terhadap Delik Formal*. PROFESOR RUDI MARGONO, 2026.

Sofian, Ahmad. "Penguatan Kapasitas Jaksa Melalui Koordinasi Dalam Proses Penyidikan dan Penuntutan dalam RUU KUHAP: Studi Perbandingan Amerika Serikat, Belanda danIndonesia."

PAMPAS: *Journal of Criminal Law* 6, no. 2 (2025): 183-217.

Waisapi, Jeffry Yuliyanto, *Panduan Lengkap Tahapan Persidangan Pidana Menurut KUHAP Baru (UU No. 20 Tahun 2025): Perspektif Hak-Hak Terdakwa Dan Korban*. Detak Pustaka, 2026.

Wibowo, Agus. " Hukum Kriminal Internasional. " *Penerbit Yayasan Prima Agus Teknik*, 2025.

Wibowo, Agus, *PEMBARUAN KUHP dan KUHAP Sebagai Rekonstruksi Sistem Hukum di Indonesia*. Yayasan Penerbit, 2026.

Wibowo, Kurniawan Tri, *Aspek Hukum Dalam Dunia Digital*. Sada Kurnia Pustaka, 2025.