

Violence in Divorce and Judicial Authority: An Indonesia–Malaysia Study

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Abstrak:

This research examines how Indonesia and Malaysia handle economic domestic violence as grounds for divorce. Both countries face fragmented court jurisdictions. In Indonesia, divorce cases are handled by Religious Courts, while District Courts hear criminal domestic violence cases. In Malaysia, Islamic divorces are adjudicated by Syariah Courts, whereas victim protection falls under the jurisdiction of Civil Courts. This fragmentation creates legal uncertainty, lengthy processes, high costs, and barriers to justice for victims, especially economically dependent women. The study recommends an integrated justice system with one-stop services, simplified evidence procedures, fee waivers, a maximum resolution period of three months, and e-Court technology to harmonize legal certainty, justice, and efficiency. (Penelitian ini mengkaji cara Indonesia dan Malaysia menangani kekerasan dalam rumah tangga sebagai dasar perceraian. Kedua negara menghadapi fragmentasi yurisdiksi pengadilan—di Indonesia, kasus perceraian ditangani oleh Pengadilan Agama sementara kasus kekerasan dalam rumah tangga yang bersifat pidana ditangani oleh Pengadilan Negeri; di Malaysia, perceraian berdasarkan syariah ditangani oleh Pengadilan Syariah sementara perlindungan korban menjadi kewenangan Pengadilan Negeri. Fragmentasi ini menimbulkan ketidakpastian hukum, proses yang panjang, biaya tinggi, dan hambatan akses ke keadilan bagi korban, terutama perempuan yang secara ekonomi bergantung. Studi ini merekomendasikan sistem peradilan terintegrasi dengan layanan satu atap, prosedur bukti yang disederhanakan, pembebasan biaya, batas waktu

penyelesaian maksimal tiga bulan, dan teknologi e-Court untuk menelaraskan kepastian hukum, keadilan, dan efisiensi)

Kata Kunci:

Violence, Judicial Authority, Legal Certainty, Gustav Radbruch, Comparative Study of Indonesia–Malaysia.

Pendahuluan

Domestic violence (DV) is a complex and multidimensional human rights problem, not only in Indonesia but also in various countries, including Malaysia. In Indonesia, although it has had its own Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law) for two decades, the phenomenon of domestic violence is still showing alarming figures.¹ The number of domestic violence cases (KDRT) in Indonesia continues to rise. Crawl up from year to year. As of September 4, 2025, the number of domestic violence cases has reached 10,240. Domestic violence cases are stable at over 1,000 cases per month, and in July 2025, it was recorded as the highest with 1,395 new cases. This rising number has alarmed many groups. Women's rights activists, in particular, are calling for urgent action from both society and the government. According to the Ministry of Women's Empowerment and Child Protection (KemenPPPA), the majority of domestic violence victims are women. However, domestic violence can actually happen to anyone, including children, husbands, and parents who are within the family.² This condition indicates that the implementation of the Domestic Violence Law is still far from effective in removing domestic violence within its scope.

One of the dimensions of domestic violence that is often neglected in practice enforcement law is the economic violence. Article 9, paragraph (2) of the Domestic Violence Law explicitly states that

¹ E Firdaus, "Implementation of Law Number 23 of 2004 concerning the Elimination of Domestic Violence in Batam City," *Ius Quia Iustum Law Journal*, 2014, <https://journal.uin.ac.id/IUSTUM/article/view/4549>.

² Genis Dwi Gustati, "Domestic Violence Disturbs the Physical and Mental Health of Victims, Causes and Solutions," *UMS News Initiative*, 2025, <https://www.ums.ac.id/berita/teropong-jagat/kekerasan-dalam-rumah-tangga-yang-menyisakan-luka>.

neglect resulting in economic dependence in a way that restricts and /or prohibits proper work inside or outside the home so that the victim is under the control of the perpetrator, which constitutes domestic violence.³ Economic violence encompasses acts such as restricting or excessively controlling the use of finances, coercing a person for economic gain, and *dishonestly misappropriating property*, all of which can result in victims experiencing *distress* and financial dependence. For many women, this dependence is further reinforced by patriarchal social norms, creating a vicious cycle that is difficult to break. These factors are among the main reasons why victims of domestic violence are often reluctant to report their experiences.⁴

The situation becomes even more complicated when economic violence within households is used as grounds for divorce. This complexity highlights issues of incomplete judicial authority and the risk of inconsistent or flawed trials, which in turn create legal uncertainty. In Indonesia, there is a dualism in court authority regarding cases involving domestic violence and divorce. According to Law Number 7 of 1989, as amended by Law Number 3 of 2006 and Law Number 50 of 2009 concerning Religious Courts, the Religious Courts have the authority to examine, adjudicate, and resolve marriage cases (including divorce) involving Muslims.⁵ This division of authority

creates a situation in which victims of domestic violence seeking divorce must navigate two separate legal processes: civil proceedings in the Religious Court for divorce and criminal proceedings in the District Court for domestic violence crimes. This dual-track system contradicts the principles of simple, fast, and low-

³ S Ismiati, *Domestic Violence (KDRT) & Human Rights (HAM) (A Legal Study)* (books.google.com, 2020), <https://books.google.com/books?hl=en&lr=&id=jtJZEQAQAQBAJ&oi=fnd&pg=PP1&dq=uu+pkdrt&ots=VscTSK79NX&sig=RvYi5XEzQwvnSwBntOqhsolgwuw>.

⁴ NH Susanto, "The Challenge of Realizing Gender Equality in a Patriarchal Culture," *Muwazah: Journal of Gender Studies*, 2015, <http://repository.uingusdur.ac.id/129/>.

⁵ A Mirwan, M Akbar, and S Hanafi, "Implementation of Article 82 of Law No. 7 of 1989, JIS Law No. 3 of 2006, JIS Law No. 50 of 2009 in Divorce Cases (Case Study in Religious Courts...," *Familia: Jurnal Hukum Keluarga*, 2020, <http://jurnalfamilia.org/index.php/familia/article/view/2>.

cost justice as mandated by Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power, which states that “trial proceedings are conducted simply, quickly, and at low cost.” These principles require that court proceedings be efficient and effective (simple), timely (fast), and affordable for the public (low cost).⁶

Furthermore, the Director of Case Management of Civil Law in the Supreme Court’s Religious Courts confirms that the legal process for domestic violence is not within the scope of the authority of the Religious Court, and its follow-up is at the initiative of the victim, not based on a recommendation from the Religious Court.⁷ Thus, the Chairman of the DKI Jakarta High Religious Court believes that the judges of the Religious Court may not act passively when handling divorce cases that involve domestic violence, and must make an effort to optimally uncover facts about the occurrence of domestic violence that can be used for criminal proceedings.⁸ This ambiguity shows the lack of existing certainty laws about the role and authority of the Religious Court in handling domestic violence aspects in the case of divorce.

Problems similar to this also happened in Malaysia, a country that has a proximity system law with Indonesia, especially in terms of dual justice for Muslims. Malaysia operates a dual *court system*, comprising the *Sharia Court* for Muslims and the Civil Court for non-Muslims.⁹ Under Article 121(1A) of the Federal Constitution of Malaysia, civil courts do not have jurisdiction over matters referred to

⁶ GT Arifyanto, AH Lubis, and ..., “Implementation of the Principles of Simple, Fast, and Low-Cost Justice in Religious Courts,” *Madani: Jurnal ...*, 2023, <https://jurnal.penerbitdaarulhuda.my.id/index.php/MAJIM/article/view/1200>.

⁷ DD Nugroho, CD Prayugo, and ..., “DEVELOPMENT OF RELIGIOUS COURT SYSTEM: CHALLENGES AND PROSPECTS IN THE DIGITAL ERA,” *Synergy: Jurnal ...*, 2023, <https://e-journal.naurendigiton.com/index.php/sjim/article/view/897>.

⁸ H Riadi, “The Islamic Family Law System in Indonesia,” *Minhaj: Journal of Sharia Science*, 2021, <http://jurnal.iaibafa.ac.id/index.php/minhaj/article/view/370>.

⁹ Globalex, “Researching Islamic Law – Malaysian Sources,” 2024, https://www.nyulawglobal.org/globalex/Researching_Islamic_Law_Malaysian_Sources1.html.

the Shariah Court. The *Sharia High Court* has jurisdiction over civil matters involving Muslims, including marriage, divorce (talaq, fasakh, khulu'), property division, and livelihood.¹⁰

In the context of domestic violence, Malaysia has the Domestic Violence Act 1994 (DVA 1994), which provides protection for victims of domestic violence, including spouses, ex-spouses (former spouses), children, and family members.¹¹ Interestingly, the Domestic Violence Act of 1994 adopts a broad definition of “*domestic violence*,” which includes actions such as dishonestly misappropriating a victim's property and causing them distress through financial loss. Such acts are recognized as a form of economic violence.¹² However, the enforcement of the DVA 1994 is carried out through civil courts, while cases of divorce involving Muslims fall under the authority of an exclusive Sharia Court, as per the Administration of Islamic Law (Federal Territories) Act 1993.¹³

From the description above, it appears that both Indonesia and Malaysia are facing the same problem in handling domestic violence cases that end in divorce, namely fragmentation of authority, potential justice, causing uncertainty in the law, and burdening the victims. This fragmentation is not in line with the principle of legal certainty, which is one of the main pillars of a state based on the rule of law. Gustav Radbruch stated that certainty of law is one of the three fundamental characteristics of law, along with justice and utility.¹⁴ Certainty law requires clarity, consistency, and predictability in the implementation of law, so that the public can clearly understand their rights and obligations.¹⁵

¹⁰ “Malaysia, Federal Constitution, Article 121(1A),” nd

¹¹ “Malaysia, Administration of Islamic Law (Federal Territories) Act 1993, Act 505, Section 46.” nd

¹² “Malaysia, Domestic Violence Act 1994, Act 521, Section 2.” nd

¹³ Kevin Wu & Associates, “Who Is Protected Under The Domestic Violence Act 1994?” 2024 (nd), <https://www.kevinwuassociates.com/post/who-is-protected-under-the-domestic-violence-act-1994>.

¹⁴ Haryono Haryono, “Law Enforcement Based on Substantive Justice Values,” *Progressive Law Journal* 7, no. 1 (2019): 20.

¹⁵ MY Said and Y Nurhayati, “A Review on Rawls Theory of Justice,” ... *Journal of Law* ... (download.garuda.kemdikbud.go.id, 2021),

Furthermore, the complex procedures that victims of domestic violence must take to obtain a divorce are clearly contrary to the principles of simple, fast, and low-cost. The victim must submit a lawsuit for divorce at the Religious Court/Sharia Court, while managing the protection and/or claims process of domestic violence crimes in the District Court/ *Civil Court*, which will face a burden of psychological, financial, and time-consuming double.¹⁶ This condition is exacerbated by the fact that most victims of domestic violence are women who experience economic dependence on the perpetrators, so that access to justice becomes more difficult.

Various empirical studies show that economic consideration makes female victims of domestic violence reconsider bringing the case to court. If a domestic violence case goes to criminal proceedings, women must also be prepared to take over a not-quite-full family economy. The Domestic Violence Law does not explicitly regulate the mechanism of restitution to victims, even though the Witness and Victim Protection Agency has been given the authority to count victims' losses based on Article 12A, letter j, of Law No. 31/2014 concerning amendments to Law No. 13/2006 concerning the Protection of Witnesses and Victims.¹⁷ Absence of clear mechanisms for protecting the economic situation of domestic violence victims in the divorce process adds to the complexity of problems faced.

The urgency of conducting comparative studies between Indonesia and Malaysia is critical, given that both countries share several key characteristics: a predominantly Muslim population, a mixed legal system (combining *civil and Islamic law*), a dual court system for Muslim family cases, and specific regulations addressing domestic violence. Comparing the legal frameworks of these two nations can offer a more comprehensive perspective on how judicial

[http://download.garuda.kemdikbud.go.id/article.php?article=2581856&val=24263&title=A REVIEW ON RAWLS THEORY OF JUSTICE](http://download.garuda.kemdikbud.go.id/article.php?article=2581856&val=24263&title=A%20REVIEW%20ON%20RAWLS%20THEORY%20OF%20JUSTICE).

¹⁶ WSA WALDI SAPUTRA, *DOMESTIC VIOLENCE FROM THE PERSPECTIVE OF LAW NUMBER 23 OF 2004 AND ANALYSIS OF MAQASHID SYARI'AH* (repository.uin-suska.ac.id, 2024), <http://repository.uin-suska.ac.id/79780/>.

¹⁷ ED Setiamandani and A Suprojo, "Legal Review of Law Number 23 of 2004 Concerning the Elimination of Domestic Violence," *Reformasi*, 2018, <https://jurnal.unitri.ac.id/index.php/reformasi/article/view/924>.

authority should be structured to ensure legal certainty and uphold the principles of simplicity, efficiency, and affordability for victims of domestic violence seeking divorce.¹⁸

Several fundamental questions arise in this context: How is judicial authority structured regarding economic domestic violence as grounds for divorce in Indonesia and Malaysia? What regulations govern these arrangements? Do the current courts provide legal certainty for victims? How are the principles of simplicity, speed, and low cost implemented in handling domestic violence cases that result in divorce in both countries? Are there best practices from either country that could be adopted to improve the current system?

This research is significant from both academic and practical perspectives. Academically, it will contribute to the development of legal perspectives, particularly in the areas of Islamic family law, religious court procedural law, and human rights protection. On a practical level, the findings are expected to offer recommendations for improving the judicial system in handling domestic violence cases—especially economic violence as grounds for divorce—so that it provides greater legal certainty and upholds the principles of simple, fast, and low-cost justice for those seeking justice in domestic violence cases.

Therefore, the research titled “Judicial Authority regarding Economic Violence in the Household as a Reason for Divorce in the Perspective of Legal Certainty and the Principle of Simple, Low-Cost Justice (A Comparative Study of Indonesia–Malaysia)” is both relevant and urgent. This comparative study aims to provide an in-depth analysis of the strengths and weaknesses of the legal systems in both countries, and to formulate an ideal model of judicial authority that can offer optimal protection for victims of domestic violence during the divorce process, while upholding the principles of legal certainty as well as simple, fast, and low-cost justice.

METHOD

¹⁸ V Guslan, A Haripraptiko, and ..., “COMPARATIVE LAWS ON DOMESTIC VIOLENCE IN INDONESIA AND MALAYSIA,” ... *AL ADL HARAPAN*, 2025, <https://edumov.ourhope.biz.id/ojs/index.php/jm/article/view/21>.

This research employs a normative comparative law approach (*comparative legal research*), aiming to analyze and compare the arrangements of judicial authority regarding economic violence in the household as grounds for divorce in Indonesia and Malaysia. This approach encompasses a statutory examination of regulations related to domestic violence and divorce in both countries, a conceptual analysis of the principles of legal certainty, simplicity, speed, and low cost, and a case study of the practical application of justice in handling domestic violence cases that result in divorce.¹⁹

Research data sources consist of from material primary law in the form of regulation Indonesian legislation (Law No. 23/2004 concerning Domestic Violence, Law No. 7/1989 in conjunction with Law No. 3/2006 in conjunction with Law No. 50/2009 concerning Religious Courts, Law No. 48/2009 concerning Judicial Power) and Malaysia (Domestic Violence Act 1994, Administration of Islamic Law Federal Territories Act 1993, Federal Constitution), as well as related court decisions. Secondary legal materials include books, scientific journals, articles, and research results relevant to the topic. Data collection is conducted through library research, involving the inventory and categorization of legal materials. These materials are sourced from libraries, online legal databases, and academic publications.²

Data analysis was conducted qualitatively using a descriptive-comparative and prescriptive approach. The descriptive method is employed to systematically describe and elaborate on the arrangement of authority and justice in Indonesia and Malaysia. A comparative method is applied to examine the similarities and differences between the legal systems of both countries in terms of substantive law (legal substance), structural law (legal structure), and cultural law (legal culture) related to handling economic domestic violence as a reason for divorce.²⁰ Next, a prescriptive method is employed to provide

¹⁹ M Marzuki, *Legal Research: Revised Edition* (books.google.com, 2017), <https://books.google.com/books?hl=en&lr=&id=CKZADwAAQBAJ&oi=fnd&pg=PA1&dq=penelitian+peter+mahmud+marzuki&ots=mnMtjT6iON&sig=Ze-urgOb2AcLkcHFv1rupX8Cwxw>.

²⁰ A Muzayyanah, *Implementation of Child Support Provision After Divorce (Case Study of Banguntapan Village, Bantul, DIY)* (digilib.uin-suka.ac.id, 2018), <https://digilib.uin-suka.ac.id/id/eprint/31183/>.

recommendations for improving the judicial authority framework, ensuring greater legal certainty and upholding the principles of simplicity, speed, and low cost for victims of domestic violence seeking divorce.²¹

RESULTS AND DISCUSSION

Judicial Authority Regarding Domestic Economic Violence as Grounds for Divorce in Indonesia and Malaysia

Research results show that Indonesia adheres to a system of dualistic authority justice in handling cases of domestic violence (KDRT) that leads to divorce. Based on Article 49 of Law Number 7 of 1989, in conjunction with Law Number 3 of 2006, in conjunction with Law Number 50 of 2009 concerning Religious Courts, Religious Courts have the authority to examine, decide, and resolve cases of marriage, including divorce, for Muslims.²² Domestic violence, including economic violence as regulated in Article 9 paragraph (2) of the Domestic Violence Law, can serve as grounds for divorce under Article 19 letters (d) and (f) of Government Regulation Number 9 of 1975 in conjunction with Article 116 letters (d) and (f) of the Compilation of Islamic Law.² Article 116 letter (d) of the Compilation of Islamic Law (KHI) states that divorce may be granted if “one party commits cruelty or serious abuse that endangers the other party.” In practice, this provision has been expanded to include economic violence, as recognized under the Domestic Violence Act.²³ However, the criminal aspect of domestic violence falls under the jurisdiction of the District Court. As a result, victims who wish to pursue divorce while

²¹ Sidi Ahyar Wiraguna, “Normative and Empirical Methods in Legal Research: An Exploratory Study in Indonesia,” *Public Sphere: Journal of Social Politics, Government and Law* 3, no. 3 (2024), <https://doi.org/10.59818/jps.v3i3.1390>.

²² JM Hutagalung and T Gloriawati, “Indonesian Legal Tradition: History, Legal Products and Policies During the New Order Era,” *Sasana Law Journal*, 2022, <http://ejurnal.ubharajaya.ac.id/index.php/SASANA/article/view/1502>.

²³ M Maulana, *The Formation of the Law on the Elimination of Domestic Violence and Its Urgency for Family Resilience* (repository.ar-raniry.ac.id, 2022), <https://repository.ar-raniry.ac.id/id/eprint/24247/>.

simultaneously seeking criminal accountability against the perpetrator must file their cases in two separate courts.

Malaysian law exhibits a similar pattern to Indonesian law in terms of the dual authority of the judiciary. Under Article 121(1A) of the Federal Constitution of Malaysia, the Syariah Court has exclusive jurisdiction over matters of Islamic law, including marriage, divorce, property disputes (*matrimonial property*), livelihood, and the rights of children in foster care. In contrast, civil courts do not have jurisdiction over matters that fall within the authority of the Sharia Court.²⁴ Section 52 of the Islamic Family Law (Federal Territories) Act 1984 stipulates that Muslim women have the right to apply for fasakh (judicial dissolution of marriage) on various grounds, including neglect of maintenance for three months and the husband's failure to fulfill marital obligations (including conjugal relations) for one year.²⁵ This provision aligns with the concept of economic violence, even though that term does not explicitly refer to it. Meanwhile, the protection of victims of domestic violence is regulated under *the Domestic Violence Act 1994*, which adopts a broad definition of domestic violence. This includes acts *such as "dishonestly misappropriating the victim's property which causes the victim to suffer distress due to financial loss,"* which clearly constitutes a form of economic violence.²⁶ However, the enforcement of the Domestic Violence Act 1994 and the issuance of protection orders are handled by the civil courts. This creates a fragmentation of authority, with the *Sharia Court* responsible for divorce proceedings and *the civil court* responsible for the protection of domestic violence victims.²⁷

The fundamental similarities between the two countries are as follows: (1) both have adopted a dual court system, separating the authority of religious or sharia courts for Muslims and general or civil courts for non-Muslims; (2) both recognize domestic violence, including economic violence, as a legal ground for divorce, albeit using

²⁴ "Malaysia, Federal Constitution, Article 121(1A)."

²⁵ Islamic Family Law, "Act 303 ISLAMIC FAMILY LAW (FEDERAL TERRITORIES) ACT 1984," no. January (2006).

²⁶ "Malaysia, Domestic Violence Act 1994, Act 521, Section 2."

²⁷ NM Nasir, "THE IMPLEMENTATION OF H A D ĀNAH IN MALAYSIAN SHARĪ' AH COURT: A LITERATURE REVIEW," *Malaysian Journal of Sharia and Law* 9, no. 2 (2021): 39–65, <https://doi.org/10.33102/mjsl.vol9no2.335>.

different terminology; and (3) both experience a fragmentation of authority, with separate courts handling divorce cases and the protection or criminal aspects of domestic violence.⁹ However, there are significant differences in aspects substantive and procedural. Indonesia explicitly regulates economic violence in Article 9 paragraph (2) of the Domestic Violence Law, defining it as a form of neglect that results in economic dependence. In contrast, Malaysia addresses economic violence implicitly through concepts such as “*failure to provide maintenance*” and “*dishonestly misappropriating property*,” which are regulated in two separate legal instruments: *the Islamic Family Law Act* and *the Domestic Violence Act*. From a procedural aspect, Indonesia provides flexibility for victims to use Article 116 letter (f) KHI (quarrel) continuously as an alternative if proving domestic violence is difficult, while Malaysia requires more specific evidence for each proposed ground of *fasakh*.²⁸

Analysis of Legal Certainty in Gustav Radbruch's Perspective

To understand problematic certainty law in fragmentation authority justice for economic domestic violence as a reason for divorce, this study uses a theoretical framework based on three marks of law from Gustav Radbruch. Radbruch, a prominent German legal philosopher, argued in his work “*Einführung in die Rechtswissenschaft*” that law must uphold three fundamental values: (1) Justice (*Gerechtigkeit*), meaning that the law should provide equal treatment for those who are alike and different treatment for those who are different, as long as such distinctions are rationally justified; (2) Legal Certainty (*Rechtssicherheit*), which requires clarity, consistency, predictability, and the validity of positive legal norms to ensure order in society; and (3) Benefit (*Zweckmäßigkeit*), meaning that the law should serve the welfare and happiness of society. Third, this value is fundamental but often exists in a tense relationship (*spannungsverhältnis*), where the effort to realize one value can conflict with other values.²⁹ However, Radbruch also developed what is known as the Radbruch Formula (*Radbruchsche Formel*), which states: “*The conflict between justice and legal certainty should be resolved in favor of positive law, unless the law is so unjust that it ceases to be law.*” In other words, conflicts between justice and

²⁸ BPK Regulation, “COMPILATION OF ISLAMIC LAW,” 1991, 1–2.

²⁹ G. Radbruch, “Philosophy of Law” (M, 2004).

legal certainty should generally be settled by prioritizing positive law, except in cases where the law is so unjust that it can no longer be considered law.³⁰ This formula indicates that certainty law remains important to maintain for a stable system law, but may not be enforced as a pretext to defend extreme injustice.

Radbruch's theory of fragmentation of authority and justice in cases of economic domestic violence as a reason for divorce shows a significant tension between the third mark-based law. From the perspective of certainty law and system dualism, the authorities in Indonesia and Malaysia actually provide clarity regarding the distribution of jurisdiction: the Religious Court/Sharia Court handles divorce, while the District Court/Civil Court handles aspects related to criminal/domestic violence protection. However, this certainty is actually causing uncertainty for victims regarding the steps the law requires to be taken, which forum to visit, and how effective coordination between the two courts can be achieved.

From the perspective of justice, fragmentation of this authority creates an obstacle to access to justice for victims of domestic violence, *in particular*, women who experience economic dependence. The victims must go through the procedure twice, bear the burden of multiple costs, face the process of proving in two different forums, and experience re-traumatization because they must repeatedly tell their experience of violence. This condition clearly does not meet the principle of justice distributive, which requires that everyone, including vulnerable groups, have equal access to the system of justice. Meanwhile, from the perspective of utility, the existing system does not provide optimal benefits for both victims and society as a whole. This results in a lengthy, complex, and costly process. As a consequence, many victims choose not to report domestic violence or pursue divorce, allowing the cycle of violence to continue. As a result, the preventive objectives of the 1994 Domestic Violence Act are not fully realized.

Based on Radbruch's theoretical framework, solutions to the problem of fragmented judicial authority must harmonize the three fundamental values of law, with justice as the primary orientation.

³⁰ A Kaufmann, "Gustav Radbruch Und Die Radbruchsche Formel," *Rechtshistorisches Journal*, 2000, <https://www.ceeol.com/content-files/document-149060.pdf>.

First, in terms of legal certainty, there is a need to harmonize regulations to provide clear mechanisms for coordination and integration between the Religious/Sharia Courts and the District/Civil Courts in handling domestic violence cases that result in divorce. Indonesia can draw from the model established by SEMA Number 3 of 2023, which recognizes domestic violence as an independent ground for divorce – without the requirement of a separate six-month period – and clarifies the authority of Religious Court judges to examine evidence of domestic violence and recommend that victims pursue criminal proceedings if necessary.³¹ Malaysia can develop a mechanism for an *integrated protection order* that allows the *Sharia Court* to issue a temporary protection order for victims of domestic violence in the *fasakh* process, with direct coordination with the *civil court* for the enforcement of the DVA 1994.³²

Second, from the perspective of justice, it is necessary to develop a mechanism *such as a one-stop service or an integrated court system* that enables victims of domestic violence to access all legal protections – such as divorce, protection orders, economic claims, rights, and child custody – within a single, unified judicial forum. This model could take inspiration from the proposed *family court* system that has been under consideration in Malaysia since 2000, which envisions comprehensive jurisdiction to handle all aspects of family law cases, including domestic violence.³³

Third, from the perspective of benefit, the implementation of the principles of simplicity, speed, and low cost must be strengthened through several measures: (a) simplifying procedures for proving domestic violence by accepting various types of evidence, including electronic evidence in accordance with Article 55 of the Domestic Violence Law; (b) exempting or subsidizing court costs for victims of domestic violence who are unable to afford them; (c) providing free legal assistance; (d) establishing clear mechanisms for restitution and compensation to protect victims' economic rights; and (e) offering

³¹ Republic of Indonesia, “SEMA No. 3 of 2023,” 2023, 5.

³² “Malaysia, Domestic Violence Act 1994, Act 521, Section 2.”

³³ SM Ruzmi, “EMPOWERMENT OF THE FAMILY SUPPORT DIVISION OF THE SELANGOR STATE SYARIAH JUDICIARY DEPARTMENT UNDER SYARIAH LAW IN MALAYSIA,” *Malaysian Journal of Syariah and Law* 13, no. 2 (2025): 428–44, <https://doi.org/10.33102/mjssl.vol13no2.724>.

specialized training for judges on victim perspectives and gender-based violence. Harmonizing these three fundamental legal values aligns with Radbruch's perspective that justice, certainty, and utility should not be viewed as dichotomous, but rather as mutually supportive elements in realizing the true purpose of law: the protection of human dignity.³⁴

Implementation of the Principles of Simple, Fast, and Low Cost in Handling Domestic Violence as a Ground for Divorce

A simple principle, fast and low cost, is a fundamental principle in organizing the judiciary, which is firmly regulated in Article 2, paragraph (4) of Law Number 48 of 2009 concerning Judicial Power, which states: "*Trial proceedings are carried out simply, quickly and at low cost.*"³⁵ This principle is not merely a procedural norm, but rather a reflection of ideals of access-oriented justice, including access to justice for all and equality of access for all, without discrimination, across the public. According to Article 2, paragraph (4) of the Law, "simple" means that the examination and resolution of cases are conducted efficiently and effectively, without unnecessary complexity. "Fast" refers to the timely resolution of cases, in line with the principle that "*justice delayed is justice denied.*" "Low cost" signifies that court fees are affordable to the public, while still ensuring accuracy in the pursuit of truth and justice.³⁶

This principle has a strong philosophical foundation in the context of a democratic state of law, where every citizen is guaranteed the right to obtain justice without economic, procedural, or temporal obstacles. Article 4, paragraph (2) of the Judicial Power Law also strengthens this principle by stating that the court helps the seekers of

³⁴ SH Badriyah Khaleed, *Legal Resolution of Domestic Violence* (books.google.com, 2018), <https://books.google.com/books?hl=en&lr=&id=k-cjEAAAQBAJ&oi=fnd&pg=PA1&dq=uu+pkdrt&ots=mwO-H8Cc98&sig=2leEmdYqXQR5V4QV7eUm4awMy84>.

³⁵ LAW OF THE REPUBLIC OF INDONESIA NUMBER 48 OF 2009, "JUDICIARY POWER," *Экономика Региона*, no. Kolisch 1996 (2009): 49–56.

³⁶ MA Widyanti, "Implementation of PERMA NO. 1 YEAR 2019 Concerning Electronic Case Administration and Trials in Courts: A Maslahah Review," *Journal of Islamic Business Law*, 2021, <https://urj.uin-malang.ac.id/index.php/jibl/article/view/769>.

justice and strives to overcome all obstacles and barriers to achieving simple, fast, and low-cost justice, which shows that the court has an active role in realizing this principle, not only passively waiting for the parties' initiatives.³⁷

The implementation of the principles of simplicity, speed, and low cost in handling domestic violence as a reason for divorce in Indonesia faces significant challenges, particularly due to the fragmentation of authority and judicial processes. First, in terms of simplicity, the dual authority system between the Religious Court and the District Court creates complex procedures that run counter to the principles of efficiency and effectiveness. Victims of domestic violence who wish to seek a divorce must file for divorce in the Religious Court, as stipulated in Article 49 of the Religious Court Law. At the same time, criminal reports and applications for protection must be submitted to the District Court in accordance with the Domestic Violence Law.³⁸ This dualism creates confusion for victims, especially those from less educated backgrounds or without access to legal assistance, regarding which court they should approach first, whether the criminal case must be resolved before filing for divorce or vice versa, and how effective coordination between the two courts can be achieved.

Second, in terms of the speed aspect, the fragmentation of authority results in prolonged case resolution, as victims must follow two separate legal processes, either sequentially or simultaneously. Empirical data indicate that divorce cases in the Religious Court typically take 3–6 months, not including the additional 6–12 months or more required for criminal proceedings in the District Court. This is especially concerning for victims of domestic violence, who urgently need swift protection from further harm.³⁹

³⁷ M Usrin, "Legal Analysis of the Principles of Simple, Fast, and Low-Cost Justice in the Criminal Justice System," *Solusi: Journal of the Faculty of Law ...* (download.garuda.kemdikbud.go.id, 2018), <http://download.garuda.kemdikbud.go.id/article.php?article=1077197&val=16044&title=LEGIDAL ANALYSIS OF THE PRINCIPLES OF SIMPLE, FAST, AND LOW-COST JUSTICE IN THE CRIMINAL JUSTICE SYSTEM>.

³⁸ Mirwan, Akbar, and Hanafi, "Implementation of Article 82 of Law No. 7 of 1989, JIS Law No. 3 of 2006, JIS Law No. 50 of 2009 in Divorce Cases (Case Study in Religious Courts...)"

³⁹ N Firmansyah, "Implementation of Criminal Case Trials Through Teleconference in Realizing the Principles of Fast, Simple and Low-Cost

Third, from the perspective of low cost, the current system actually places a double financial burden on victims, as they must pay court fees in two separate courts. This is in addition to the costs of obtaining a *medical report (visum et repertum)*, transportation expenses for traveling to and from court, administrative fees for processing required documents, and, if legal representation is used, paying lawyer's fees for two different cases. This situation is particularly burdensome for victims of domestic violence, who are often financially dependent on the perpetrator, making the principle of low-cost justice unattainable and instead creating economic barriers to accessing justice.⁴⁰

A condition similar to this also occurred in Malaysia, where the implementation principle is simple, fast, and low-cost (although not explicitly articulated in one article, as in Indonesia), and it faces the same structural obstacles. First, from the aspect of simplicity, the fragmentation between *the Sharia Court* and *the Civil Court*, based on *Article 121(1A) of the Federal Constitution*, creates confusing complexity for the victims. The victims must understand that for divorce through a phase-based process under *Section 52 of the IFLA 1984*, they must apply to the Sharia Court. However, to obtain a *protection order*, *residence order*, or *compensation* under the DVA 1994, they must go to the Civil Court. This complexity is compounded by the differences in procedures, standards, proof, and administrative requirements between the two systems, the trial, which requires victims to have adequate legal knowledge or access to assistance of quality law.⁴¹

Second, in terms of speed, research shows that the fasakh process in Malaysia can take anywhere from 6 months to 10 years, depending on the complexity of the case and the workload of *the Sharia*

Justice," *Al-Adl*, 2021, <https://www.neliti.com/publications/362100/pelaksanaan-persidangan-perkara-pidana-lalu-teleconference-dalam-mewujudkan-a>.

⁴⁰ S Aristeus, "Ideal Execution of Civil Cases Based on the Principle of Correlation Justice in an Effort to Realize Simple, Fast and Low-Cost Justice," *De Jure Legal Research Journal*, 2020, <https://elibrary.ru/item.asp?id=76768756>.

⁴¹ F Oktrina, "... THE DOMESTIC VIOLENCE ACCORDING TO LAW IN INDONESIA AND MALAYSIA: Regulation No. 23/2004 Considering PKDRT & Domestic Violence ...," *Jurnal Ilmiah Kutei*, 2023.

Court in each region.⁴² This very long time is contrary to the needs of victims of domestic violence to leave a dangerous marriage immediately.⁴³ Especially if the victim also has to submit a case separately in *Civil Court* to obtain protection based on the DVA 1994, the total time required becomes longer because both processes run on separate tracks without an effective mechanism for coordination.⁴⁴

Third, from low-cost aspect, although the filing fees at the Sharia Court are relatively low (around RM50 per case), but this fee becomes heavy load for Woman from the B40 group (bottom 40% income group) which on average has income below RM4,850 per month and many of them actually do not have income still Because economically dependent on her husband. In addition, victims must bear the costs of obtaining necessary evidence – such as *medical reports* to prove physical violence or financial statements to demonstrate *failure to provide maintenance* – along with transportation expenses, lost income from taking time off work to attend court proceedings, and attorney fees if they can secure legal representation. Altogether, these costs are substantial and clearly contradict the principle of low-cost justice.⁴⁵

A comparative evaluation shows that both Indonesia and Malaysia face similar failures in implementing the principles of simplicity, speed, and low cost when handling economic domestic violence as grounds for divorce. This failure stems from the structural

⁴² D Tendra and ER Gultom, “Small Claims in Indonesia, Singapore, Malaysia: A Comparative Legal Study,” *UNES Law Review*, 2023, <https://review-unes.com/index.php/law/article/view/357>.

⁴³ D K Randawar and M I Ikhsan, “Love, Law, and Litigation: Legal Perspectives on Breach of Promise to Marry in Malaysia,” *Researchgate.Net*, n.d., https://www.researchgate.net/profile/Izwan-Ikhsan/publication/396869042_Love_Law_and_Litigation_Legal_Perspectives_on_Breach_of_Promise_to_Marry_in_Malaysia/links/68fc4877fdca73694bae3e3/Love-Law-and-Litigation-Legal-Perspectives-on-Breach-of-Promise-to-Marry-in-Malaysia.pdf.

⁴⁴ F S Shuaib, “The Islamic Legal System in Malaysia,” *Pac. Rim L. & Pol’y J.*, 2012, https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/pacrimlp21§ion=10.

⁴⁵ MA Syahrin, HL Fitriani, and ..., “Fulfillment of Child Support After Parental Divorce: A Comparison of Indonesia and Malaysia,” *Pena Justisia: Media ...* (jurnal.unikal.ac.id, 2025), <http://jurnal.unikal.ac.id/index.php/hk/article/download/6414/3765>.

design of separate judicial jurisdictions between religious/sharia courts and general/civil courts, which forces victims of domestic violence to navigate a complex dual system that is time-consuming and incurs multiple costs.

To overcome these problems, comprehensive structural reform is needed by adopting an integrated justice system approach through several mechanisms: (1) *a one-stop service* at the Religious Court or Sharia Court should be established, enabling victims to access all necessary legal protections – such as divorce, protection from violence, economic claims, and child custody determinations – in a single forum; This system should be supported by judges who are specially trained to handle domestic violence cases and are sensitive to issues of gender-based violence. (2) Simplification of the procedures for presenting evidence should be achieved by adopting more flexible standards for domestic violence cases. This includes accepting electronic evidence, such as WhatsApp messages, emails, and CCTV footage, as well as expert testimony from psychologists or social workers. Additionally, the principle of limited reverse burden of proof should be implemented, whereby once the victim establishes a *prima facie* case of domestic violence, the burden shifts to the perpetrator to prove otherwise; (3) Elimination or subsidy full legal costs for victims of domestic violence who cannot afford it, with an automatic fee waiver mechanism that does not require complicated administrative procedures. Free legal assistance (*pro bono*) should also be provided through collaboration with legal aid organizations, law faculties, or state-appointed advocates; (4) A clear time frame should be established for resolving domestic violence cases, with a maximum duration of three months from registration to a legally binding decision. This can be achieved through a fast-track procedure that prioritizes domestic violence cases on the court lists and minimizes non-essential procedures; and (5) The utilization of information technology should be utilized through the implementation of e-Court and e-Litigation systems to expedite case administration. These systems should enable online case registration, virtual hearings for victims who cannot attend in person due to safety or geographic reasons, and the electronic delivery of court decisions.

Based on normative and comparative analysis, it can be concluded that the failure to implement the principles of simplicity, speed, and low cost in handling domestic violence as grounds for

divorce in Indonesia and Malaysia is not solely due to weaknesses in legal norms, but rather stems from the structurally fragmented design of judicial authority. Formally, the division of jurisdiction between religious/sharia courts and general/civil courts provides a specific legal framework. However, from the perspective of substantive legal certainty, this fragmentation actually creates procedural uncertainty for victims regarding the appropriate legal pathways, the sequence of processes, and the assurance of effective and continuous protection.

Analysis using Gustav Radbruch's three fundamental legal values reveals a dominance of formal legal certainty at the expense of justice and benefit. In the context of economic domestic violence, the law's rigidity in separating judicial authority fails to respond to the urgent needs of victims for prompt protection, economic recovery, and the simultaneous resolution of their legal and marital status. As a result, the principles of simplicity, speed, and low cost are not realized, as victims are forced to bear substantial administrative, time, and financial costs.

Thus, fragmentation of authority in the judiciary can be seen as a form of systemic structural injustice that hinders access to justice. Therefore, the integrated justice system approach becomes urgent, not just a choice policy, to return to a substantive law orientation on justice and effective protection for victims of economic domestic violence.

Conclusion

Based on the formulation of the first problem, this study concludes that the arrangement of judicial authority regarding economic violence as grounds for divorce in Indonesia and Malaysia remains inherently fragmented. In Indonesia, authority over divorce lies with the Religious Court, while criminal aspects and the protection of domestic violence victims fall under the jurisdiction of the District Court. In Malaysia, divorce cases involving Muslims are handled by the Sharia Court through the *fasakh* mechanism. In contrast, the protection of victims of domestic violence, including economic violence, is under the jurisdiction of the Civil Court pursuant to the Domestic Violence Act 1994. This arrangement demonstrates a clear formal separation of jurisdictions, but lacks functional integration.

In response to the second problem formulation, fragmentation of judicial authority has not provided substantive legal certainty for victims of economic domestic violence. Although the distribution of

authority is regulated normatively, in practice, victims face procedural ambiguity, the obligation to navigate dual legal pathways, and the absence of effective coordination mechanisms between courts. This situation results in uncertainty regarding the protection of victims' rights, including their marital status, protection from ongoing violence, and the recovery of their economic rights.

Regarding the third problem formulation, this study finds that the principles of simple, fast, and low-cost justice have not yet been optimally implemented in either country. The layered processes across two different judicial forums result in lengthy, complex, and costly case resolution, which ultimately hinders access to justice for victims, particularly women who are economically dependent. Therefore, this study concludes that it is necessary to strengthen an integrated judicial model capable of unifying the handling of divorce and the protection of victims of economic violence within a simpler, faster, and more affordable mechanism, thereby ensuring legal certainty and substantive justice.

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