

Research article

Comparative Legal Analysis of the Resolution of Physical Violence Crimes Against Women in Indonesia and Malaysia

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ABSTRACT

The incidence of criminal acts of violence against women, or gender-based violence, in both Indonesia and Malaysia has shown an upward trend. This study aims to conduct a comparative legal analysis of the resolution mechanisms for physical violence against women in the two countries. The research employs a doctrinal legal method. The findings indicate that in Indonesia, the resolution of physical violence against women involves both penal and non-penal approaches. Domestic violence cases are addressed through multiple strategies, including preemptive, preventive, and curative measures. In Malaysia, the resolution of domestic violence cases includes the issuance of Interim Protection Orders (IPO) and Protection Orders (PO) by the courts, which are accompanied by access to shelters, counseling services, legal advice, guidance, and referrals to relevant institutions. The study concludes that both Indonesia and Malaysia share common objectives in preventing and eradicating domestic violence. However, their approaches differ due to the distinct legal systems each country follows. Malaysia adheres to the Anglo-Saxon common law system, whereas Indonesia follows the Civil Law tradition.

Keywords: Physical Violence; Women; Indonesia; Malaysia

A. INTRODUCTION

In essence, the law exists to safeguard the rights and interests of every citizen. It possesses binding authority and imposes strict sanctions; thus, all individuals are expected to act in accordance with established legal norms. One of the fundamental objectives of law is to prevent arbitrary actions by any party (Pradinata, 2020).

However, the position of wives as victims of domestic violence remains problematic, even following the enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (commonly referred to as the PKDRT

Law). When wives experience domestic violence whether physical, psychological, or of another nature and report their husbands to law enforcement authorities, there is frequently concern that such actions may provoke further violence by the perpetrator (Ayu, Gustina, & Rahfiludin, 2022).

Furthermore, some women choose to remain silent about the abuse they endure due to anxiety regarding their future should their husbands be subjected to criminal prosecution. This illustrates the ongoing limitations in the enforcement of domestic violence legislation,

particularly in cases where the perpetrator is the victim's spouse (Purwanti et al., 2024). Such circumstances persist because many wives who suffer from abuse are reluctant to report the violence committed by their husbands (Sopacua, 2022).

Philosophically, the formulation of the PKDRT Law was intended to provide legal protection for women, particularly wives, from domestic violence. This is reflected in the first consideration of the preamble to the law, which states: "Every citizen has the right to feel secure and to be free from all forms of violence, in accordance with the values of Pancasila and the 1945 Constitution of the Republic of Indonesia" (Arief, 2017).

This provision implies that women who have experienced violence have not yet fully attained a sense of security and freedom from all forms of violence. In the author's view, this is partly attributable to the absence of a clear and explicit obligation within the current PKDRT Law to undertake preventive measures (Myhill, 2019). The type of prevention referred to here is proactive prevention that is, actions taken before any act of violence occurs, or before there is a reasonable suspicion that the perpetrator intends to commit violence against the victim.

The intent and purpose of enacting the PKDRT Law are set forth in Article 4, which stipulates that the law aims to:

1. Prevent all forms of domestic violence;
2. Protect victims of domestic violence;

3. Take legal action against perpetrators of domestic violence; and
4. Preserve the integrity of a harmonious and prosperous household.

The eradication of domestic violence is carried out based on the following principles:

1. The Principle of respect for human rights;
2. The Principle of justice and gender equality;
3. The Principle of non-discrimination; and
4. The Principle of victim protection.

Indonesia has ratified approximately ten (10) international human rights instruments out of the twenty-five (25) universally recognized by the international community. Among these are key conventions that protect women's rights, including: first, the *International Convention on the Political Rights of Women* (1952); and second, the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW, 1979), which was ratified by Indonesia through Law Number 7 of 1984.

According to CEDAW, the principle of state obligation includes the duty to ensure the protection and fulfillment of women's rights through legislative and policy measures. Such policies must safeguard women's human rights in both the public and private spheres of legal life (Mareta, 2016).

Acts of violence remain prevalent in Indonesian society. Such acts occur not only in public spaces but also within the domestic sphere. In many instances, domestic violence commonly referred to as DV, disproportionately

affects women, particularly wives, who often become the primary victims. The occurrence of domestic violence can have complex and cumulative consequences, including the erosion of self-esteem, restricted participation in public and social life, and detrimental effects on both the physical and mental well-being of the victims.

Over time, it has become increasingly difficult for victims of domestic violence to report or disclose their experiences to law enforcement authorities. This reluctance is largely attributable to the perception among many victims that matters occurring within the household including abusive conduct by a husband are of a private nature and should not be subjected to public scrutiny (Mestika, 2020).

Margie Gladies Sopacua contends that violence against women constitutes a criminal act that harasses, humiliates, and undermines human dignity, and therefore must be recognized as a violation of fundamental human rights (Sopacua et al., 2018). In contemporary discourse, violence against women is no longer viewed as an individual or isolated issue, but rather as a national concern and a matter of international urgency. In certain contexts, such violence may even be classified as a transnational issue (Sopacua & Sakharina, 2018).

In Indonesia, physical violence against women especially wives constitutes a form of abuse that may result in significant harm, including physical assaults that cause bodily pain and suffering. The consequences of such

violence frequently result in psychological trauma for the victim (Fatoni, 2013). With respect to physical violence, Article 6 of the Law on the Elimination of Domestic Violence (Law No. 23 of 2004) provides: *“Physical violence as referred to in Article 5(a) shall mean any act that causes pain, illness, or serious injury.”*

Criminal sanctions for these offenses are stipulated in Article 44, paragraphs (1) to (4) of the Law on the Elimination of Domestic Violence (PKDRT), as follows:

- (1) Any person who commits an act of physical violence within the household as referred to in Article 5 letter a shall be punished with imprisonment for a maximum of 5 (five) years or a fine of up to Rp 15,000,000.00 (fifteen million rupiah).
- (2) In the event that the act referred to in paragraph (1) results in the victim suffering illness or severe injury, the perpetrator shall be punished with imprisonment for a maximum of 10 (ten) years or a fine of up to Rp 30,000,000.00 (thirty million rupiah).
- (3) In the event that the act referred to in paragraph (2) results in the death of the victim, the perpetrator shall be punished with imprisonment for a maximum of 15 (fifteen) years or a fine of up to Rp 45,000,000.00 (forty-five million rupiah).
- (4) In the event that the act as referred to in paragraph (1) is committed by the husband against the wife or vice versa which does not cause illness or obstacles to carrying out official work or livelihood or daily activities, he shall be punished with imprisonment for a maximum of 4 (four) months or a fine of up to a lot of Rp 5,000,000.00 (five million rupiah).

Forms of physical violence may include acts such as pinching, pulling hair, biting, choking, pouring hot water, tying up, pushing, throwing objects, dragging, hitting, kicking, stepping on,

slamming, banging the head, and forcing the victim to walk on their knees.

Malaysia regulates domestic violence through the Domestic Violence Act 1994 (Act 521), which defines domestic violence as any intentional act of causing, or attempting to cause, fear of physical harm to the victim, or inflicting physical violence through acts that are known, or reasonably ought to be known, to cause physical injury (Zulfatun, 2012).

In contrast to Indonesia, criminal sanctions for such acts in Malaysia are further elaborated under the Penal Code (Act 574). Pursuant to the Domestic Violence Act 1994 (Act 521), forms of physical violence include:

1. Committing or attempting to commit acts of physical harm, such as restraining, pinching, shaking, slapping, hitting, biting, twisting the arm, kicking, striking with a blunt object, stabbing, or shooting;
2. Preventing or neglecting the provision of essential care, including denial of access to medical treatment, medication, mobility aids (e.g., wheelchairs), food or fluids, sleep, hygiene assistance, or forcing the consumption of alcohol or drugs.

The Annual Report of the National Commission on Violence Against Women (CATAHU) compiled data from questionnaires, direct complaints submitted to the Referral Complaints Unit (UPR), and records from the Religious Courts (BADILAG), indicating a total of 338,496 cases of gender-based violence (GBV)

against women in the referenced year. This represents a significant increase from 226,062 cases reported in 2020. Notably, there was also an 80% increase in complaints received by the National Commission, rising from 2,134 cases in 2020 to 3,838 cases in 2021 (Komnas Perempuan, 2022).

The 2023 Annual Report of the National Commission on Violence Against Women further highlights a substantial rise in overall cases of violence against women, including both physical and non-physical forms of abuse (Komnas Perempuan, 2023).

Statistics from the Women's Aid Organisation (WAO) in Malaysia indicate that cases of domestic violence increased significantly between 2000 and 2018. In 2000, there were 3,468 reported cases, rising to 5,513 cases by 2018 (WAO, 2018). Data from the Royal Malaysia Police (PDRM) further show an upward trend in reported incidents in the state of Selangor between 2017 and 2021. The COVID-19 pandemic further exposed the prevalence of violence against women in Malaysia, with WAO reporting a fourfold increase in calls to its hotline. According to police data, approximately 19,268 cases of domestic violence were recorded between 2020 and 2022.

In response, WAO Executive Director Sumitra Visvanathan, in 2022, urged the Malaysian government to strengthen its legal framework and treat domestic violence as a

serious criminal offence in order to prevent unnecessary fatalities (WAO, 2018).

The upward trend in cases of violence against women in both Malaysia and Indonesia presents a compelling subject for legal analysis. This study aims to examine the comparative legal approaches adopted by Indonesia and Malaysia in addressing physical violence against women. The urgency and relevance of this research lie in its focus on how each country's legal system responds to such acts of violence, particularly those occurring within domestic settings.

A review of relevant literature reveals at least six prior studies that have addressed similar topics. Mestika (2020), in *Comparative Study: Legal Protection for Women Victims of Domestic Violence in Indonesia and Malaysia*, analyzed the regulatory frameworks for protecting victims of domestic violence in both jurisdictions. Sopacua and Sakharina (2018), in *The Legal Protection of Women from Violence (Human Rights Perspective)*, emphasized that violence against women constitutes a violation of fundamental human rights and stressed the need for comprehensive legal protection, particularly for women in domestic roles.

In a subsequent study, Sopacua (2019), in *Legal Politics and Strategy on Protection of Women from Violence in the Human Rights Context*, examined the legal strategies and policy mechanisms aimed at safeguarding women from acts of violence. Sopacua (2023) also contributed to the discourse through *Perception of Indonesia*

and Afghanistan in Preventing Psychic Violence Against Household Women, a study that explored the prevention of psychological violence within households in both countries.

Further, Amalia, Hafrida, and Siregar (2021), in *Comparison of Domestic Violence Criminal Regulations in Indonesian and Malaysian Criminal Law*, provided a comparative analysis of the legal definitions, criminal sanctions, and policy implications concerning domestic violence under the respective legal systems.

Although not directly related to domestic violence, Gunawan et al. (2024), in *Human Rights Violations in India's Hijab Ban and the Need for Community Advocacy*, examined broader human rights themes, including religious freedom, equality, and non-discrimination. These issues remain highly relevant to the broader discussion on women's rights and legal protections.

B. RESEARCH METHODS

The research method employed in this study is the doctrinal legal research method (Tan, 2021). This study is descriptive-analytical in nature and adopts a comparative legal analysis approach, focusing on the legal frameworks in Indonesia and Malaysia concerning domestic violence. The research examines the relevant statutes, regulations, and legal instruments that govern domestic violence in both jurisdictions.

Legal materials were gathered through library-based research and analyzed normatively, encompassing the examination of theoretical

frameworks, legal principles, doctrines, and established legal norms. In addition, a comparative method was utilized to assess and contrast the legal mechanisms for resolving cases of domestic violence against women specifically wives in Indonesia and Malaysia.

All collected legal materials were systematically compiled, processed, reviewed, evaluated, and analyzed using a descriptive and analytical comparative approach (Benuf & Azhar, 2020).

C. RESULT AND DISCUSSION

1. Violence Against Women as Wives

Freedom of religion and protection from discrimination are two fundamental principles underpinning the legal framework for the protection of human rights (Gunawan et al., 2024). As a state governed by the rule of law, Indonesia upholds religious values and the prohibition of discrimination against women as integral components of its human rights obligations (Badriyah et al., 2021).

The law must remain responsive and adaptable to the dynamic changes occurring within society. Advancements in society driven by the rapid development of technology and mass media have given rise to new forms of crime, often resulting in a legal vacuum (*rechtsvacuum*). The rapid pace of social development frequently outpaces legal reform, necessitating not only amendments to statutory laws but, at times, even constitutional revisions to address emerging

challenges and better serve the interests of the Indonesian people (Ashady, 2020).

The family is the primary and most intimate social unit, serving as the foundation for individual growth and socialization. Various approaches are employed to promote effective communication and harmony within the household, with the goal of building an ideal family and preventing domestic conflict. However, in practice, no family is entirely free from challenges, whether caused by internal dynamics or external pressures (Jaliansyah, 2021).

From a biological and psychological perspective, issues affecting women must be considered holistically, encompassing both physical and emotional dimensions. Article 1 of the Universal Declaration of Human Rights affirms that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood (Pusparini & Swardhana, 2021).

Domestic violence, as a relatively recent concern within Indonesian society, is increasingly recognized as affecting not only women. Law Number 23 of 2004 concerning the Elimination of Domestic Violence (commonly referred to as the PKDRT Law) acknowledges multiple potential parties involved in domestic violence, including wives, husbands, children, blood relatives, relatives by marriage, individuals related through breastfeeding, guardians, caretakers residing within the household, and domestic workers.

Within the context of domestic violence, any member of the household may be a victim or a perpetrator (Pradinata, 2020).

Acts of violence are frequently committed not only within domestic settings but also in public spheres, including workplaces. These acts may range from physical abuse to psychological and social maltreatment. The persistence of violence against women often stems from entrenched cultural ideologies, patriarchal social structures, and unequal gender relations (Ramli, 2022). This phenomenon cuts across all segments of society, from traditional communities to urban and modern populations. As such, violence against women continues to be a significant and compelling issue for legal scholars, practitioners, and advocates of women's rights (Suri, Hamka, & Noerzaman, 2020).

Violence is broadly defined as any act that causes harm or distress to another individual, particularly women, and may manifest in both physical and psychological forms (Wijaya, 2014). Physical manifestations may include fatigue, bruising, pain, dizziness, hemorrhaging, cracked lips, and other visible injuries. Psychological impacts may include trauma, stress, anxiety, and irrational fears (Ayu et al., 2023). Such harm may initially appear minor but can escalate to severe and long-term consequences. Addressing these issues often requires multidisciplinary intervention, including physical rehabilitation and psychological counseling. While psychological effects may seem transient, they are typically

rooted in deeply traumatic experiences resulting from gender-based violence (Herawati, Purwanti, & Pinilih, 2021).

Margie Gladies Sopacua asserts that "The Law of the Republic of Indonesia on Human Rights affirms that human rights are all rights inherent in and attached to human beings as creations of God Almighty. These rights, as regulated under the Human Rights Law, must be respected, protected, and upheld by the state through various positive legal frameworks. Human rights originate from God Almighty as the Creator, and the state, as the authority empowered to enact legal regulations, must protect the human rights of every individual" (Sopacua, 2023).

Furthermore, Sopacua (2019) argues that "Indonesia, as a developing country, has a poor reputation regarding human rights violations, particularly in relation to the violation of women's rights. Such violations can be classified as acts of violence against women."

In general, within societal norms, the father is often recognized as the head of the household. His role is pivotal, as he bears the primary responsibility for protecting his wife and providing for the family's welfare to the best of his capacity. Together with the mother, the father is also responsible for raising, nurturing, educating, and safeguarding their children, while also instilling moral values and promoting character development. However, evolving family dynamics shaped by broader socio-cultural changes have resulted in a number of deviations from these

traditional roles, including incidents of violence committed not only by fathers but also by other family members against their relatives (Ramadhan & Sutawijaya, 2020).

Sopacua further explains that acts of violence occurring within society often stem from ideological constructs that serve to legitimize oppression, whether between individuals or social groups. These acts are frequently driven by systemic inequalities. In such a context, the position of women particularly wives is commonly subordinated to that of men, where societal expectations often demand unconditional submission and obedience from women to their husbands (Sopacua et al., 2018).

2. Comparison of Legal Solutions for Criminal Offenses of Violence Against Women Between Indonesia and Malaysia

The legal systems of Indonesia and Malaysia reflect distinct historical paths, cultural contexts, and colonial legacies. From the perspective of legal sources, Indonesia adheres to a civil law system (continental law tradition), primarily influenced by Dutch colonial rule. Its main sources of law include statutory legislation (Undang-Undang or UU), the 1945 Constitution (UUD 1945), government regulations, customary law, and albeit to a limited extent jurisprudence.

In contrast, Malaysia adopts a common law system (Anglo-Saxon legal tradition), inherited from its British colonial past. The principal sources of law in Malaysia consist of Acts of Parliament, the Federal Constitution, judicial

precedents, common law principles, and local customary laws (Bo'a, 2018).

The judicial structure in Indonesia comprises the General Courts, Religious Courts, Military Courts, and Administrative Courts, with the Supreme Court (*Mahkamah Agung*) and the Constitutional Court (*Mahkamah Konstitusi*) serving as the highest judicial authorities. In Malaysia, the court system consists of the Magistrates' Courts, the Sessions Courts, the High Courts, the Court of Appeal, and the Federal Court, which functions as the apex court and is equivalent in status to Indonesia's Supreme Court. Additionally, Sharia Courts operate under the jurisdiction of each individual state and are responsible for adjudicating personal and family matters involving Muslims. While Indonesia's legal framework is rooted in the Dutch civil law tradition, Malaysia's legal system is based on the British common law model (Syahrin, 2018).

Despite sharing a common Malay cultural heritage and predominantly Muslim populations, Indonesia and Malaysia adopt different legal approaches to addressing domestic violence. This comparative analysis underscores the role of social norms, local customs, and religious laws in shaping each country's legal response to domestic violence.

a. Indonesia

Indonesia is a state governed by the rule of law, which requires that all citizens and government officials comply with the applicable legal provisions. However, in practice, both law

enforcement officers and legislators occasionally act in contravention of these laws (Aswandi & Roisah, 2019).

The term "criminal act" is commonly used to translate the Dutch expression *strafbaar feit* or *delict*. The phrase *strafbaar feit* consists of three components: *straf*, *baar*, and *feit*. Literally, *straf* means "punishment," *baar* translates to "can" or "may," and *feit* means "act" (Novitasari & Rochaeti, 2021). In a broader legal context, *straf* is often equated with "law," although the Dutch word for "law" is *recht*, indicating some conceptual overlap. The term *baar* conveys potentiality ("can" or "may"), while *feit* may be translated as "act," "event," "violation," or "deed" (Mulyadi, 2010).

According to the author, a criminal act constitutes a violation of legal norms specifically, a breach of the legal order whether committed intentionally or unintentionally by an individual (the perpetrator). Such violations warrant the imposition of legal sanctions or penalties to uphold the rule of law, ensure legal certainty, and protect the public interest (Muqorobin & Arief, 2020).

The concept of gender should not be understood solely in terms of distinct roles or efforts between men and women, but rather as the way both are situated within a broader social system in which they are integral components. Historically, factors such as socio-economic class, ethnicity, race, and religion have contributed to systemic social injustices. However, many of

these issues have been addressed through the adoption of the Universal Declaration of Human Rights (UDHR), which has gained widespread recognition among the international community (Roy, 2020). Nevertheless, gender-based inequality persists not only in underdeveloped and developing countries but also in developed nations where it continues to be a central issue in the pursuit of gender justice.

Women represent a critical component of society, possessing equal rights and responsibilities in contributing to national development and independence. Their active participation is essential to fostering a democratic social and political order, grounded in the protection of human rights, environmental sustainability, and civilian supremacy (Krisnalita, 2018).

Within the family unit, the physical and emotional needs of each member must be fulfilled. The father, as the head of the household, bears the responsibility of ensuring the welfare of his family, protecting them from harm, and expressing love and care toward his wife and children. Likewise, the mother is responsible for maintaining family unity and nurturing both her husband and children (Satria, 2018). Children, in turn, are expected to respect, obey, and follow the guidance of their parents in order to build a better future.

The family serves as the foundational institution through which values, norms, and social behavior are first introduced and passed

down to future generations. It is within the family that individuals initially learn to love, respect, and uphold the dignity of others thereby ensuring the protection and well-being of each family member (Triardana, Yuliartini, & Mangku, 2021).

According to Law Number 23 of 2004, domestic violence is defined as: "any act committed against a person, particularly a woman, that results in physical, sexual, psychological, or economic suffering or distress within the household, including threats of such acts, coercion, or the unlawful deprivation of liberty" (Purwanti & Setiawan, 2020). Physical violence is the most readily observable form, often identifiable through visible injuries sustained by the victim (typically the wife). The Domestic Violence Law (PKDRT) specifically addresses physical abuse in Article 6, which states: "Physical violence is any act that causes pain, illness, or serious injury" (Turatmiyah & Y, 2013).

Domestic violence, as defined in Law No. 23 of 2004, refers to any act committed against a person particularly a woman that causes suffering or distress, whether physical, sexual, psychological, and/or due to neglect, within the household. This includes threats to commit such acts, coercion, or the unlawful deprivation of liberty within the domestic sphere.

In many cases of domestic violence, a recurring pattern known as the "cycle of violence" can be identified between intimate partners. This cycle typically consists of three main stages (Setiamandani & Suprojo, 2018):

1. Tension-Building Phase: During this stage, the perpetrator begins to criticize, blame, or exert control over their partner, often through minor acts of abuse or intimidation. The victim (usually the wife) tends to endure this behavior in hopes of maintaining harmony in the household.
2. Acute or Crisis Phase: The tension escalates into an episode of acute violence. At this point, the perpetrator may lash out with physical or verbal aggression to "punish" their partner, instilling fear. The victim may respond with resistance or attempts to defend herself.
3. Calm or Honeymoon Phase: Following the abuse, the perpetrator may express remorse, apologize, and promise not to repeat the behavior. This stage often brings temporary reconciliation, creating a false sense of hope for change in the relationship.

The enforcement of the Law on the Eradication of Domestic Violence (Law No. 23 of 2004) faces several significant obstacles. First, the provisions related to domestic violence in the law are often viewed as "half-hearted," leading to implementation gaps where most forms of domestic violence are treated as complaint-based offenses and are often classified as non-physical violence, resulting in limited legal consequences. Second, there is a perceptual bias among law enforcement officers from the outset, in which domestic violence is frequently regarded as a private family matter and, consequently, is given low priority. Third, law enforcement tends to

interpret domestic violence narrowly, focusing primarily on physical violence. As a result, the impacts of violence are assessed mainly through visible physical evidence, neglecting the psychological and emotional dimensions that are invariably present. Fourth, the legal protection stipulated in the Domestic Violence Law is hindered in practice due to a lack of consistent understanding among law enforcement personnel. Fifth, the prevailing criminal law paradigm focuses solely on the act and the perpetrator, without giving adequate attention to the victim. This leads to the victim's role and needs being overlooked within the criminal justice system (Abdurrachman, 2010).

Indonesia's criminal justice system recognizes two approaches to resolving criminal cases: penal and non-penal policies. In domestic violence cases, there is a tendency to prioritize non-penal approaches in an effort to prevent divorce. Non-penal policies are considered a form of criminal liability in domestic violence cases and encompass various types and forms of sanctions or penalties. The formulation of domestic violence offenses aligns with the legal provisions contained in Law No. 23 of 2004. Non-penal policies serve preemptive, preventive, and repressive functions, focusing on the prevention of domestic violence, with particular emphasis in this context on physical violence (Sopacua, 2024).

The issue of crime control in society is inseparable from the broader discourse of criminal law policy. Criminalization policy refers to

the act of designating certain behaviors previously not classified as crimes as criminal offenses. Essentially, criminalization is a component of criminal policy that utilizes penal (criminal law) instruments to address social issues. Therefore, legal action, including the use of criminal law, forms part of a strategic approach to law enforcement aimed at addressing and reducing societal problems, including domestic violence (Jhony, 2011).

Hanafi Amrani argues that crime control measures, which are part of broader social policy, are fundamentally integral to efforts aimed at social defense. These measures can be pursued through two main avenues (Amrani, 2019):

1. Penal approach, which involves the application of criminal law.
2. Non-penal approach, which includes:
 - a. Prevention without punishment, such as the implementation of administrative and civil sanctions.
 - b. Influencing public perceptions of crime and punishment through the use of mass media.

Article 54 of the Law on the Elimination of Domestic Violence (PKDRT) stipulates that investigations, prosecutions, and court proceedings shall be conducted in accordance with the provisions of the applicable Criminal Procedure Code (KUHP), unless otherwise specified by the Act. The currently applicable criminal procedural law is established in Article 8 of Law No. 8 of 1981. Therefore, cases of

domestic violence committed against women as wives are processed in the same manner as other criminal offenses.

Sometimes, law enforcement agencies specifically the police resolve domestic violence cases without involving the courts. The police may choose this route for several reasons, including:

1. A prevailing community preference for maintaining peace and harmony over strict legal enforcement;
2. Legal proceedings often fail to resolve the underlying issues and may even escalate conflict or dissatisfaction among the involved parties; and
3. Certain reported cases may lack sufficient legal basis to proceed through formal legal channels.

This practice is influenced by the concept of restorative justice, which seeks to address the interests of both victims and perpetrators while finding constructive solutions for domestic violence cases. Restorative justice emphasizes repairing harm, reconciliation, and community involvement, serving as an alternative framework to conventional punitive measures within the criminal justice system particularly in cases involving domestic violence.

The following section outlines methods for resolving domestic violence (Kekerasan Dalam Rumah Tangga, or KDRT) through several strategic approaches: preemptive, preventive, and curative measures.

1) Preemptive Approach

In the preemptive approach, a variety of actions can be undertaken by the central government, local governments, and community organizations, including:

- a) Amending or enacting new laws and regulations concerning domestic violence, specifically aimed at preventing violence against wives in its various forms;
- b) Establishing dedicated agencies or institutions to monitor the enforcement of these laws and regulations;
- c) Conducting intensive public dissemination of relevant laws through various media platforms to raise public awareness;
- d) Organizing communication, information, and education (CIE) initiatives on the prevention of domestic violence, including seminars, workshops, and counseling sessions;
- e) Promoting public and institutional awareness that all forms of domestic violence are violations of human dignity and constitute criminal acts;
- f) Educating the community, particularly about acts of violence against women, their rights, and the necessary measures to prevent such violence;
- g) Facilitating cross-sectoral cooperation and coordination, including with official NGOs and community organizations (Ormas) affiliated with the government, to ensure more comprehensive prevention and handling of violence against wives;

- h) Providing education and training programs for wives to improve their competencies and knowledge regarding domestic violence and their legal rights;
- i) Establishing government-sponsored safe houses temporary shelters designed to protect women from domestic violence, such as trauma centers operated by the Ministry of Social Affairs;
- j) Providing alternative housing for women who must be separated from or distanced from the perpetrator for their safety;
- k) Offering counseling and premarital education to prospective couples to foster awareness and appreciation of the true meaning of marriage, with the goal of building peaceful, harmonious, and emotionally fulfilling households.

2) Preventive Approach

The following preventive measures can be implemented to address domestic violence, particularly violence against women as wives:

- a) Raising public awareness that violence against women, especially wives, constitutes a violation of human rights;
- b) Promoting sensitivity and community responsibility to prevent violence against women at all levels, including neighborhood units (RT/RW), villages, subdistricts, and organizations such as Family Welfare Empowerment (Pembinaan Kesejahteraan Keluarga/PKK);
- c) Fostering collaboration between communities and institutions such as the Integrated Service

Center for the Empowerment of Women and Children (P2TP2A) and Provincial Women and Children Protection Services to conduct seminars and outreach programs on preventing domestic violence;

- d) Distributing brochures, posters, or banners that promote anti-violence messages and raise awareness about violence against women as wives.

3) Curative Approach

Curative approaches aim to address the consequences of domestic violence through corrective and rehabilitative measures, including the imposition of educational sanctions on perpetrators based on the type and severity of the abuse. These actions are intended to benefit not only the perpetrator but also the victim and society at large (Jamaludin, 2016):

- a) Providing incentives to individuals or institutions that contribute significantly to the reduction, elimination, or eradication of domestic violence, thereby supporting a peaceful and harmonious family life;
- b) Identifying and applying appropriate intervention models tailored to the victim's condition and the values upheld within the family, ensuring a highly effective resolution process;
- c) Referring victims of domestic violence to medical professionals or counselors for early intervention, with the goal of preventing severe psychological trauma and long-term mental health issues;

- d) Resolving domestic violence cases with empathy and a focus on the victim's future well-being, aiming to prevent feelings of vengeance and promote healing;
- e) Encouraging perpetrators to sincerely repent and seek forgiveness from God (Allah SWT) for their actions, fostering a sense of safety and peace for all family members;
- f) Prompt and firm government action is essential in addressing all forms of domestic violence. Referring to Malaysia's Domestic Violence Act 1994 (Act 521) can serve as a model to minimize adverse societal impacts and enhance legal protection mechanisms.
- d. Preparing prospective spouses and new parents with the knowledge and skills necessary to build harmonious, peaceful, and mutually respectful relationships in order to prevent domestic violence;
- e. Filtering content from both print and electronic media to exclude material that depicts or promotes violence;
- f. Providing education and care for children based on their gender, individual conditions, and developmental potential; and
- g. Encouraging empathy and concern for individuals affected by domestic violence, while refraining from placing blame on the victims.

In addition, from both psychological and pedagogical perspectives, one effective approach to addressing domestic violence is through curative efforts that focus on parental education. This involves teaching parents how to educate and treat their children with humanity and respect (Iskandar, 2016). The following measures can be implemented:

- a. Equipping family members with the necessary skills to promptly report incidents of domestic violence to the appropriate authorities capable of providing assistance;
- b. Educating family members on how to protect themselves from behaviors or situations that may lead to domestic violence;
- c. Raising awareness among all family members about the short- and long-term consequences of domestic violence;

b. Malaysia

The legal systems of Malaysia and Indonesia differ significantly. Malaysia follows the Anglo-Saxon (common law) legal system, while Indonesia adheres to a Civil Law system. This distinction stems from the different historical backgrounds of the two countries.

Malaysia is a federation composed of thirteen states Johor, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Perak, Perlis, Penang, Sabah, Sarawak, Selangor, and Terengganu and three federal territories: Kuala Lumpur, Labuan, and Putrajaya (Kamal & Panggabean, 2004). Historically, Malaysia was colonized by the Portuguese and Dutch before falling under British control at the end of the 18th century. The Anglo-Dutch Treaty, signed in London in 1824, formalized British dominance over the territories

that now comprise Malaysia and Singapore. These territories once formed part of the Straits Settlements (Penang, Singapore, and Malacca), the Federated Malay States (Selangor, Perak, Pahang, and Negeri Sembilan), and the Unfederated Malay States (Perlis, Kedah, Kelantan, Terengganu, and Johor). Sabah and Sarawak, formerly known as British Borneo, eventually joined Malaysia (Kamal & Panggabean, 2004).

As a federal state, Malaysia's Islamic marriage laws vary between states, depending on local legislation. These laws can be broadly categorized into two groups. The first group comprises laws based on the Deed of Association, although adjustments have been made in some cases; these laws apply in Selangor, Negeri Sembilan, Penang, Pahang, Perlis, Terengganu, Sarawak, and Sabah. The second group consists of laws that differ significantly from the Deed, although they still retain some similarities; these are implemented in Kelantan, Johor, Malacca, and Kedah (Jaliansyah, 2021).

The Federation of Malaysia gained independence from British colonial rule on August 31, 1957. As of 2004, approximately 60 percent of the population identified as Muslim. Most Malaysian Muslims follow the Shafi'i school of thought, with a smaller portion adhering to the Hanafi school. Other major religions include Buddhism (mainly among Chinese and Indian communities), Hinduism, and Christianity.

According to Article 3 of the Malaysian Constitution, "Islam is the religion of the Federation," although other religions are permitted and respected. The Constitution also establishes that the head of state serves as the head of the Islamic religion, and Article 11 guarantees the right to religious freedom (Kamal & Panggabean, 2004).

Malaysian family laws include various state-specific enactments such as the Malacca Islamic Family Law 1983, the Kelantan Islamic Family Law 1983, the Negeri Sembilan Islamic Family Law 1983, the Federal Territories Islamic Family Law 1984, the Perak Islamic Family Law Enactment No. 1 of 1984, the Kedah Islamic Family Law Enactment 1979, the Penang Islamic Family Law Enactment 1985, the Terengganu Islamic Family Law Enactment 1985, the Pahang Islamic Family Law Enactment 1987, the Selangor Islamic Family Law Enactment 1989, the Johor Islamic Family Law Enactment 1990, the Sarawak Islamic Family Law Ordinance 1991, the Perlis Islamic Family Law Enactment 1992, and the Sabah Islamic Family Law Enactment 1992.

In Malaysia, criminal offenses are referred to as *jenayah* or *qanun*. *Jenayah* refers to acts that are morally reprehensible and violate criminal laws. The definition of *jenayah* is influenced by two sets of norms: legal and moral norms, which are culturally embedded. Legally, *jenayah* refers to actions prohibited by criminal statutes.

With regard to domestic violence, Malaysia has witnessed an increasing number of reported cases each year. In fact, the number of reported cases often exceeds the number of unreported incidents. Like Indonesia, Malaysia has specific legislation addressing domestic violence. Notably, Malaysia is recognized as the first Asian country to enact legislation aimed at protecting victims of domestic violence and acknowledging it as a significant social concern (Yusoff, 2010).

Malaysia's commitment to eradicating domestic violence is embodied in the Domestic Violence Act 1994 (Act 521). This act was established to protect victims of domestic abuse and to address related issues. According to Section 2 of the Domestic Violence Act 1994 (Act 521), domestic violence is defined as:

- a) Deliberately placing or attempting to place the victim in fear of physical harm;
- b) Inflicting physical harm on the victim through acts known or reasonably expected to cause injury;
- c) Coercing the victim by threats into engaging in sexual acts or performing actions they are not legally obligated to undertake;
- d) Wrongfully confining or restraining the victim without their consent; and
- e) Committing acts of betrayal or property damage with the intent to cause emotional distress or animosity toward the victim (Amalia, Hafrida, & Siregar, 2021).

In Malaysia, physical violence is regulated under two main legal frameworks: the Domestic

Violence Act 1994 (Act 521) and the Malaysian Penal Code (Act 574). To this day, Malaysia continues to rely on both statutes to address incidents of physical violence within households.

Under the Domestic Violence Act 1994 (Act 521), physical violence is specifically addressed in Section 2, which defines domestic violence as:

- (1) Intentionally or knowingly placing, or attempting to place, the victim in fear of physical injury;
- (2) Causing physical injury to the victim through an act that is known, or reasonably should be known, to result in such injury (Amalia, Hafrida, & Siregar, 2021).

Section 2 further expands the definition of domestic violence to include acts of coercion that compel the victim to engage in sexual acts or other behaviors which the victim has the legal right to refuse. It also recognizes other forms of domestic abuse, which are categorized as follows:

- (1) Physical violence;
- (2) Psychological or emotional abuse;
- (3) Violence resulting in property damage; and
- (4) Violence involving the use of intoxicating substances that cause delusion or mental disturbance.

This comprehensive legal approach reflects Malaysia's effort to combat domestic violence through both punitive and protective measures, ensuring that various forms of abuse are legally recognized and addressed.

The concept of physical violence as outlined in Section 2 of the Domestic Violence Act 1994 (Act 521) includes the deliberate act of placing, or attempting to place, the victim in fear of physical harm, as well as inflicting physical harm through an act that is known, or reasonably ought to be known, to result in such harm. Additionally, the consequences of physical violence are further addressed in the Malaysian Penal Code (Act 574), particularly in Sections 319 and 320, which specifically define and differentiate between general injuries and grievous bodily harm (Amalia, Hafida, & Siregar, 2021).

Indonesia and Malaysia share several similarities in their efforts to prevent and eradicate domestic violence. Malaysia enforces the Domestic Violence Act 1994 (Act 521), while Indonesia implements Law Number 23 of 2004 on the Elimination of Domestic Violence. Both legal frameworks share common principles in addressing the issue of domestic violence (Heyns, 2016).

The Domestic Violence Act 1994 (Act 521) provides for interim protection orders (IPOs) and protection orders (POs) issued by the courts, which may include provisions for shelter, counseling services, advisory and guidance support, and referrals to other relevant agencies.

In Malaysia, the concept of domestic violence encompasses the following acts (Yusoff, 2010):

- (1) Intentionally or deliberately place or attempt to place the victim in fear of physical harm;
- (2) Are known or ought to be known to potentially cause physical harm;
- (3) Force the victim to engage in sexual acts or other actions;
- (4) Restrict or confine the victim;
- (5) Cause damage to property;
- (6) Inflict psychological abuse, including emotional distress;
- (7) Cause the victim to become delusional or administer intoxicating substances or other drugs without the victim's consent, or if consent is given, it is obtained unlawfully; and
- (8) In cases involving child victims, cause the child to suffer delusions through the use of intoxicating substances or other drugs.

The eradication of domestic violence is founded on principles that uphold human rights, justice, gender equality, non-discrimination, and the protection of victims (Wangga & Kardono, 2018). Several countries have established family courts, including Canada, the United States, New Zealand, Australia, the United Kingdom, and Japan. In South Asia, countries such as the Philippines, Malaysia, and Singapore also have dedicated family courts. In jurisdictions such as the United States, Australia, and Singapore, these courts serve as forums for resolving family-related disputes through mediation.

Essentially, the key principles that should guide the functioning of family courts as exemplified by the Principal Family Court of New

Zealand include the following (Aziz & Musa, 2023):

- a. Judges who specialize in family law;
- b. Privacy for families during court hearings;
- c. Courts specifically recognized as family courts;
- d. Evidentiary rules that give special consideration to women's rights;
- e. Free counseling services to facilitate reconciliation;
- f. When possible, resolving family matters through conciliation;
- g. Courts should be equipped with psychologists and other experts.

In Malaysia, the Department of Social Welfare (*Jabatan Kebajikan Masyarakat*, JKM) plays a vital role in supporting victims of domestic violence (Yusoff, 2010). Its responsibilities include:

1. Assisting in obtaining interim protection orders and protection orders from the court;
2. Providing shelter;
3. Offering counseling services;
4. Providing advisory and guidance services; and
5. Referring to other agencies.

Part II of the Domestic Violence Act 1994 (Act 521) outlines provisions related to IPOs and POs, including regulations on shelter, counseling, advisory services, and referrals. Furthermore, Part IV details the legal procedures for obtaining Protection Orders, including how requests for both IPOs and POs may be initiated.

An Interim Protection Order may be requested to provide temporary protection for the

victim while the police conduct an investigation into a domestic violence-related offense. A Protection Order, on the other hand, may be issued during criminal proceedings under the Penal Code when the accused is charged with acts that constitute domestic violence. Protection Orders can be granted:

- (a) As a condition of granting bail or at any stage of the criminal proceedings; or
- (b) When compounding the offense under Section 260 of the Criminal Procedure Code (Act 593).

Based on the discussion above, it is evident that Indonesia has made significant legal progress, particularly with the enactment of the Sexual Violence Crime Law. However, implementation challenges and the persistence of patriarchal legal culture hinder the effectiveness of protection mechanisms, often perpetuating gender injustice within the legal system. Meanwhile, although Malaysia has established several legal instruments to protect women, significant gaps remain such as the lack of legal recognition for marital rape and gender-biased interpretations in Sharia law. These shortcomings indicate that women's rights are not yet fully protected and, in some cases, the law may reinforce rather than dismantle patriarchal structures. Both Indonesia and Malaysia have made normative advances in their legal frameworks, but structural, cultural, and enforcement barriers continue to limit the extent to which the law can genuinely safeguard women's rights.

D. CONCLUSION

The legal systems in Malaysia and Indonesia differ significantly. Malaysia adheres to the Anglo-Saxon common law system, while Indonesia follows the Civil Law system, reflecting their distinct colonial and historical backgrounds.

In Indonesia, physical violence against women is addressed under Law Number 23 of 2004 on the Eradication of Domestic Violence (PKDRT). There are two main approaches to resolving such cases: penal and non-penal. The penal approach involves the application of criminal law, while the non-penal approach emphasizes preventive efforts without the imposition of criminal sanctions, aiming instead to influence societal attitudes toward crime and punishment. The penal method of resolving domestic violence is often referred to as restorative justice.

Indonesia applies several strategies in addressing domestic violence, namely preemptive, preventive, and curative approaches.

In Malaysia, domestic violence is addressed through the Domestic Violence Act 1994 (Act 521). This act provides legal mechanisms such as Interim Protection Orders (IPOs) and Protection Orders (POs) issued by the court. It also mandates the provision of shelter, counseling services, advisory and guidance services, and referrals to other relevant agencies. Furthermore, Part IV of the Domestic Violence Act outlines the procedures for obtaining Protection

Orders, including the conditions and legal process for requesting both IPOs and POs.

An Interim Protection Order may be requested to provide temporary protection for the victim while awaiting the outcome of a police investigation into an alleged act of domestic violence. A Protection Order, on the other hand, may be sought within the context of criminal proceedings under the Penal Code, particularly when the accused has been charged with an offense that falls under the legal definition of domestic violence. A Protection Order may be issued:

- (a) As a condition for granting bail or at any stage of the legal proceedings;
- (b) When compounding the offense, as outlined in Section 260 of the Criminal Procedure Code (Act 593).

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perempuan

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