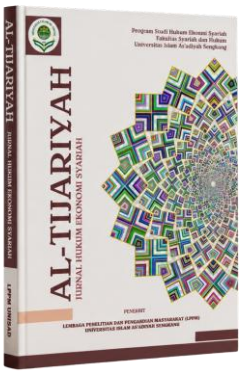
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# CROSS-JURISDICTIONAL NE BIS IN IDEM IN SHARIA ECONOMIC DISPUTES: SUPREME COURT DECISION 4 K/AG/2026

***PENERAPAN ASAS NE BIS IN IDEM LINTAS LINGKUNGAN PERADILAN DALAM SENGKETA EKONOMI SYARIAH: PUTUSAN MAHKAMAH AGUNG NOMOR 4 K/AG/2026***

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## Abstract

Ne bis in idem prevents a dispute that has been finally decided from being adjudicated again. This literature review examines how the principle operates across judicial jurisdictions in sharia economic disputes, taking Supreme Court Decision No. 4 K/Ag/2026 as its focal case and drawing on recent scholarship on ne bis in idem, res judicata and the absolute jurisdiction of the Religious Courts. The review shows that the Supreme Court extended the principle to final General Court decisions to avoid conflicting judgments and secure legal certainty. This reasoning is consistent with Article 1917 of the Civil Code and earlier practice, yet it strains absolute competence where the earlier court lacked authority. The article proposes four criteria to frame cross-jurisdictional application. It clarifies how finality of judgments and jurisdictional boundaries can be reconciled in Indonesian sharia economic litigation.

**Keywords:** ne bis in idem, sharia economic disputes, judicial jurisdiction, legal certainty.

## *Abstrak*

*Asas ne bis in idem mencegah sengketa yang telah diputus secara final diadili kembali. Tinjauan pustaka ini menelaah bekerjanya asas tersebut lintas lingkungan peradilan dalam sengketa ekonomi syariah, dengan Putusan Mahkamah Agung*

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*Nomor 4 K/Ag/2026 sebagai kasus utama dan dengan merujuk kajian terkini tentang ne bis in idem, res judicata, dan kompetensi absolut Peradilan Agama. Hasil tinjauan menunjukkan bahwa Mahkamah Agung memperluas asas tersebut pada putusan Peradilan Umum yang telah final demi menghindari putusan yang saling bertentangan dan menjamin kepastian hukum. Pertimbangan ini sejalan dengan Pasal 1917 KUHPerdata dan praktik sebelumnya, tetapi menimbulkan ketegangan dengan kompetensi absolut apabila pengadilan terdahulu tidak berwenang. Artikel ini mengusulkan empat kriteria untuk membingkai penerapan lintas lingkungan peradilan. Tinjauan ini memperjelas bagaimana finalitas putusan dan batas kewenangan mengadili dapat diselaraskan dalam litigasi ekonomi syariah di Indonesia.*

***Kata kunci:*** *ne bis in idem, ekonomi syariah, lingkungan peradilan, kepastian hukum*

## Introduction

The absolute competence of the Religious Courts (Pengadilan Agama) over sharia economic disputes is affirmed by Article 49(i) of Law No. 3 of 2006, which amended Law No. 7 of 1989 on Religious Courts. This provision widened the jurisdiction of the Religious Courts from marriage, inheritance, wills, grants, endowments (waqf) and sadaqah to include zakat, infaq and sharia economics. The expansion took place when sharia economic practice was already established in society and needed a clear legal reference. The jurisdiction remained part of the Religious Courts Law after its second amendment by Law No. 50 of 2009. It was briefly eroded by Article 55(2) of Law No. 21 of 2008 on Sharia Banking, until Constitutional Court Decision No. 93/PUU-X/2012 of 29 August 2013 declared the Elucidation of that provision, which opened a choice of forum to the General Courts, contrary to the 1945 Constitution and without binding legal force.

Even so, affirming absolute competence does not automatically remove the overlap between the Religious Courts and the General Courts. Zulhefni, for instance, found that sharia economic cases were still being filed in District Courts, for reasons relating to contract clauses, customers, the competence of Religious Court judges, and the District Courts' own stance. The overlap arises when a dispute that is in substance a sharia economic dispute is first examined and decided by a District Court, and the dissatisfied party then files a new claim with the same parties and object in a Religious Court. This raises the question of how ne

bis in idem under Article 1917 of the Civil Code applies: whether it governs only decisions within the same judicial jurisdiction or also decisions across jurisdictions.

The issue became concrete in Supreme Court Decision No. 4 K/Ag/2026 of 4 February 2026, together with Medan High Religious Court Decision No. 91/Pdt.G/2025/PTA.Mdn of 2 September 2025 and Medan Religious Court Decision No. 3462/Pdt.G/2024/PA.Mdn of 7 July 2025. The plaintiff sued over a sharia financing contract dated 14 October 2003, alleging that the defendant committed an unlawful act by imposing a penalty although the financed business had long ceased to operate. The defendant raised an exception of ne bis in idem at first instance. The Medan Religious Court accepted it because the dispute had the same subject and object as three earlier cases on the same contract: Decision No. 463/Pdt.G/2019/PN Mdn of 10 March 2020 and Decision No. 334/Pdt.G/2021/PN Mdn of 15 December 2021, both rendered by the Medan District Court and both rejecting the claim, and Decision No. 2206/Pdt.G/2015/PA Mdn of 6 October 2016, in which the Religious Court declared that it lacked authority because of a BAMUI/Basyarnas arbitration clause and did not accept the claim. The Medan High Religious Court upheld the decision but held that ne bis in idem cannot rest on decisions from a judicial jurisdiction with a different absolute competence, and therefore relied only on Decision No. 2206/Pdt.G/2015/PA Mdn. The Supreme Court dismissed the cassation appeal and declared the claim inadmissible for ne bis in idem. It disagreed with the High Religious Court's basis, because the 2016 decision was a negative decision that had not touched the substance of the case, but it found the same subject and object as in Decision No. 334/Pdt.G/2021/PN Mdn, which rejected the claim, was upheld by Medan High Court Decision No. 189/Pdt/2022/PT.Mdn of 5 July 2022 and is final. It reasoned that, although the dispute fell within the absolute competence of the Religious Courts, the application of ne bis in idem cannot be confined to the same judicial jurisdiction and must also take account of decisions from different jurisdictions, in order to avoid conflicting judgments and to achieve legal certainty.

This reasoning raises a legal problem worth examining. On the one hand, it is oriented towards legal certainty and the prevention of forum shopping. On the other hand, absolute competence is doctrinally the authority of a judicial body over certain types of cases that, absolutely, no other judicial body may examine, whether within the same or a different jurisdiction, and a claim filed with a court lacking authority is inadmissible. The question follows: can a District Court decision on a dispute that is normatively within the absolute competence of the Religious Courts serve as the basis for applying ne bis in idem?

The earlier studies reviewed in Section II have touched on cross-jurisdictional ne bis in idem, the limits of Religious Court competence and sharia dispute resolution, but only separately. To the authors' knowledge up to October 2026, no academic study has examined the application of ne bis in idem to District Court decisions on sharia economic disputes; commentary on the decision studied so far consists of a summary of its legal principle in an official judiciary medium. This is the novelty of the present review: the tension between cross-jurisdictional ne bis in idem and the principle of absolute competence is sharper here than in ordinary civil disputes.

**Research methods**

This article addresses three questions based on Supreme Court Decision No. 4 K/Ag/2026. First, how did the Supreme Court construe ne bis in idem when a case with the same subject and object had already been examined in a different judicial jurisdiction? Second, what is the standing of a final District Court decision as a basis for ne bis in idem, particularly in relation to the absolute competence of the Religious Courts over sharia economic disputes? Third, what are the legal implications of that application for legal certainty, the prevention of repeated examination of the same case, and the consistency of decisions in the Religious Courts? Through these questions, the article examines the relationship between jurisdiction, the finality of judgments and the application of ne bis in idem in the Indonesian court system.

Theoretically, the article is expected to enrich the study of civil procedure law, particularly the cross-jurisdictional application of ne bis in idem and its relationship with absolute competence and legal certainty. Practically, it is expected to serve judges, legal practitioners and academics who need to understand how ne bis in idem applies to sharia economic disputes involving decisions from different judicial jurisdictions, and to help litigants appreciate the importance of final judgments and of preventing repeated examination of the same case.

**Ne Bis In Idem, Res Judicata and the Finality of Judgments**

Scholarship on ne bis in idem in Indonesian civil procedure centres on Article 1917 of the Civil Code and the binding force of final judgments. Setiawan and others studied a Sukoharjo Religious Court decision applying the principle to a series of District Court decisions up to judicial review, relying on SEMA No. 3 of 2002 on cases of ne bis in idem before different courts. They treat a positive decision on the substance of the case as a condition for the principle, criticise the examination of such cases as ordinary cases, which defeats the principle of simple, swift and low-cost justice, and propose a preliminary examination like the dismissal procedure in administrative courts. Other studies confirm the usual elements. Wewo and Naatonis, analysing a Kupang District Court decision that declared a claim inadmissible, stress that the earlier and later disputes shared the same parties, subject matter, legal relationship and court, and that the earlier decision was final and binding. Paparang and others, on the PS Glow and MS Glow trademark dispute, conclude that the principle did not apply because the Medan Commercial Court had not yet decided when the parallel suit was filed in Surabaya, which shows that an existing decision is indispensable. Kusmayanti and Dharmawan argue that a court-mediated deed of settlement has the same standing as a final judgment, so that a new suit on it is barred by ne bis in idem and res judicata.

Recent work asks whether Article 1917 is sufficient. Susilo and others observe that it governs the binding force of judgments but does not recognise

constructive res judicata, which lets litigants refile on largely the same facts under different legal theories; comparing India's Code of Civil Procedure, they argue for integrating the doctrine to strengthen finality, legal certainty and judicial efficiency. A related concern is consistency. Adicahya shows that the limits of the absolute competence of the Religious Courts may be read differently by different panels, and that legal certainty includes consistency between judicial decisions in similar cases.

**Jurisdiction of the Religious Courts over Sharia Economic Disputes**

A second body of literature concerns the jurisdiction of the Religious Courts. Saepullah traces how the 2006 expansion met the needs of a growing sharia economy, how Article 55(2) of the Sharia Banking Law reduced that competence, and why judges must be prepared for disputes grounded in Islamic commercial law (muamalah). Studies of the period after Constitutional Court Decision No. 93/PUU-X/2012 find that certainty was only partly achieved. Lubis argues that the decision gave the Religious Courts legal certainty over sharia economic disputes but that dividing them between two jurisdictions had created an overlap that undermines order and certainty. Almaududi reports that sharia banking disputes continued to be resolved in the General Courts after the decision, illustrated by a Padang District Court case, and that Article 50(2) of Law No. 7 of 1989 blurs the boundary between the two jurisdictions, with effects on property rights, unlawful acts and consumer disputes. This is consistent with Zulhefni's earlier finding that sharia economic cases were still filed in District Courts.

Recent studies also address institutional capacity. Madjid and others find that the absolute jurisdiction of the Religious Courts rests on Article 49 of Law No. 3 of 2006 and that their readiness depends on judges' professionalism, a legal politics aligning Islamic and conventional banking, and substantive law, including the Compilation of Islamic Economic Law. Malik, Maloko and Fatmawati conclude that Laws No. 3 of 2006 and No. 50 of 2009 laid a solid foundation, but that gaps in judicial training, limited use of alternative dispute resolution, procedural inconsistency and low public trust hinder implementation. Musdalifa and others

examine the competence of the Makassar Religious Court in resolving sharia economic disputes. At the edges of jurisdiction, Wibowo and others hold that the Religious Courts keep jurisdiction only while a dispute concerns carrying out a sharia financing contract and that the case moves to the Commercial Court once the debtor is declared bankrupt, while Sherhan and Suryani note that bankruptcy based on sharia contracts remains with the Commercial Court even though determining the debt may require interpreting the contract and sharia principles. Umam and others, analysing Supreme Court Decisions No. 159 K/Ag/2021 and No. 175 K/Ag/2021, find that the absence of the National Sharia Arbitration Board in a region is the main basis for the courts to accept jurisdiction, and that judges tend to prioritise substantive justice and effective dispute resolution over strict legal certainty.

## Results and Discussion

### Research Gap

Taken together, the literature treats cross-jurisdictional ne bis in idem mainly in general civil disputes, and treats the boundaries of Religious Court competence mainly in terms of forum choice, bankruptcy and arbitration. What remains unexamined is the point where the two meet: whether a final decision of a court that arguably lacked absolute competence over a sharia economic dispute can bar a new claim in the court that has that competence. Decision No. 4 K/Ag/2026 places this question squarely before the courts, and the following section analyses it.

### The Case in Decision No. 4 K/Ag/2026

The case began with a sharia financing contract dated 14 October 2003 between the plaintiff and the defendant. The plaintiff claimed to have acted in good faith to pay its obligations, while the defendant was alleged to have committed an unlawful act by imposing a penalty although the financed business had long ceased to operate.[1] The defendant raised an exception of *ne bis in idem*, arguing that a dispute with the same subject and object had already been decided by two Medan

[1]Supreme Court Decision No. 4 K/Ag/2026, p. 2.

District Court decisions rejecting the plaintiff's claim, upheld on appeal, in addition to a 2016 Medan Religious Court decision that declared the court without authority and did not accept the claim.[2] The Medan Religious Court accepted the exception; the Medan High Religious Court upheld it on different reasoning; and the Supreme Court dismissed the plaintiff's cassation appeal while still declaring the case inadmissible for *ne bis in idem*.

**The Supreme Court's Reasoning: Ne Bis In Idem across Judicial Jurisdictions**

The Supreme Court's reasoning contains two crucial points. First, the panel disagreed with the Medan High Religious Court, which had used Decision No. 2206/Pdt.G/2015/PA Mdn as its basis, because that decision was a negative decision that had not touched the substance of the case, so that no legal status had yet attached to the dispute. The panel nonetheless reached the same conclusion, because it found the same subject and object as in Decision No. 334/Pdt.G/2021/PN Mdn, which rejected the claim, was upheld by Medan High Court Decision No. 189/Pdt/2022/PT.Mdn of 5 July 2022 and is final. Decision No. 463/Pdt.G/2019/PN Mdn is recited in the decision but is not stated as a basis of the ruling.[3] Second, the panel held that *ne bis in idem* does not arise solely between two or more decisions in the same judicial jurisdiction but can also arise across different jurisdictions. The fact that a sharia economic dispute is within the absolute competence of the Religious Courts therefore does not prevent the principle from applying to an earlier District Court decision between the same parties on the same object.[4] The basis is the avoidance of conflicting judgments and the achievement of legal certainty, that is, a teleological–functional argument rather than a textual argument based on the division of competence.

This construction should not be read as a breakthrough without foundation. Article 1917 of the Civil Code does not limit the principle to a particular jurisdiction, SEMA No. 3 of 2002 already regulates the handling of *ne bis in idem* before different courts, and the Sukoharjo Religious Court in 2023 applied the

[2]Medan Religious Court Decision No. 3462/Pdt.G/2024/PA.Mdn, pp. 72–73, 77–79; Supreme Court Decision No. 4 K/Ag/2026, pp. 4–5.
[3]Supreme Court Decision No. 4 K/Ag/2026, pp. 4–5.
[4]Supreme Court Decision No. 4 K/Ag/2026, pp. 5–6.

principle to a series of District Court decisions up to judicial review.[5] The first point of the Supreme Court's reasoning also accords with the condition of a positive decision identified by Setiawan and others.[6] The novelty of Decision No. 4 K/Ag/2026 lies in three features: the affirmation is made at the cassation level; the object is a sharia economic dispute whose absolute competence is explicit; and the comparison decisions came from a District Court that, to the extent the dispute is a sharia banking dispute, no longer had a basis for a choice of forum after Constitutional Court Decision No. 93/PUU-X/2012. The case also shows differing approaches between levels of court: the Medan Religious Court and the Supreme Court accepted District Court decisions as a basis, while the Medan High Religious Court rejected them.

From the perspective of legal certainty, which includes consistency between judicial decisions in similar cases,[7] the Supreme Court's approach can be understood as an attempt to prevent a party that has lost in one judicial jurisdiction from 'seeking a new forum' for a case that is identical in substance. The concern is not theoretical: Zulhefni found that sharia economic cases were still filed in District Courts, so that the same dispute may be brought in more than one jurisdiction,[8] and Almaududi's account of continued General Court practice after Decision No. 93/PUU-X/2012 points the same way.

## The Standing of a Decision of a Court Lacking Authority as a Basis for Ne Bis In Idem

A conceptual problem arises because the comparison decisions came from a District Court. Decisions No. 463/Pdt.G/2019/PN Mdn and No. 334/Pdt.G/2021/PN Mdn were rendered after Constitutional Court Decision No. 93/PUU-X/2012. To the extent the dispute is a banking or sharia economic dispute between parties subject to Article 49 of Law No. 3 of 2006,[9] the District Court had

[5]Setiawan and others, 'Penerapan Asas Nebis In Idem', pp. 194, 199–207.

[6]Setiawan and others, 'Penerapan Asas Nebis In Idem', p. 204.

[7]Adicahya, 'Mengakhiri Ambiguitas', p. 276 (citing Mansari and Maulana, 'Kepastian Hukum terhadap Pengasuhan Anak Mumayiz Pasca Perceraian', *Jurnal Yudisial*, 11.1 (2018)).

[8]Zulhefni, 'Kendala Penyelesaian', pp. 175, 179.

[9]Law No. 3 of 2006, Elucidation of art. 49, which includes persons or legal entities that voluntarily submit to Islamic law within the meaning of 'persons who are Muslim'.

no basis of absolute competence to examine its substance. A strict reading of absolute competence, as reflected in the approach of the Medan High Religious Court, would conclude that a court lacking authority should not produce a binding decision on matters outside its competence, so that the exception of *ne bis in idem* ought to be rejected.[10]

Three considerations show why the Supreme Court's outcome can nonetheless be justified. First, a defect of absolute competence does not automatically nullify a decision. Procedural law provides a route: a judge must declare lack of authority *ex officio* (Article 134 HIR), and lack of authority is a ground for cassation.[11] If that route is not taken and the decision becomes final, the decision is binding until annulled through an available legal remedy. Second, the Medan District Court decisions were positive because they rejected the plaintiff's claim, which is the kind of decision that, according to Setiawan and others, gives rise to *ne bis in idem*, unlike a decision declaring a claim inadmissible or the court without authority.[12] Third, the decisions examined do not record that an exception of absolute competence was raised or examined in the 2019 and 2021 cases; the plaintiff argued that the District Court lacked absolute competence only in its reply in the 2024 case,[13] and the full texts of the earlier decisions were not available to the authors. The question of competence therefore appears not to have been tested in the decisions now relied on. If competence was indeed not examined, it was the judge's *ex officio* duty that went unperformed. To allow the losing party to raise competence for the first time in a later claim would give it the second chance that the principle of *ne bis in idem* is meant to prevent.

This justification, however, has limits. First, the approach risks validating decisions rendered beyond authority and weakens the incentive to enforce absolute competence from the outset. Second, extending jurisdiction to sharia

[10]Adicahya, 'Mengakhiri Ambiguitas', p. 273; Herzien Inlandsch Reglement (HIR), art. 134.

[11]HIR, art. 134; Law No. 14 of 1985 on the Supreme Court, as last amended by Law No. 3 of 2009, art. 30(1)(a) (cassation for lack of authority or exceeding the limits of authority).

[12]Setiawan and others, 'Penerapan Asas Nebis In Idem', p. 204.

[13]Medan Religious Court Decision No. 3462/Pdt.G/2024/PA.Mdn, pp. 34, 72–74 (the plaintiff's argument that the District Court lacked absolute competence; the exception of Defendant I in the 2019 case is recorded as rejected, without its content).

economics requires the Religious Courts to prepare capable judges,[14] because disputes within their jurisdiction concern Islamic economic law (*muamalah*), which judges must study intensively,[15] and recent studies still report gaps in judicial training and procedural consistency.[16] This raises the question whether a District Court decision on such a dispute should close access to the forum that is normatively designed for it. On this basis, the article proposes that the application of *ne bis in idem* to decisions of other judicial jurisdictions be framed by clear criteria: *first*, the comparison decision is final and positive; *second*, the subject, object and ground of the claim are identical; *third*, the lack of authority of the earlier court was never raised, or was not pursued through the available legal remedies, by the party who now invokes it; and *fourth*, the application does not harm third parties or violate public order. These criteria are the authors' proposal and have not been formulated in existing regulation or jurisprudence.

**Differing Interpretations of the Limits of Competence and the Need for Guidelines**

Adicahya's study of Decisions No. 679 K/AG/2010 and No. 26 PK/AG/2015 shows that the limits of the absolute competence of the Religious Courts may be interpreted differently between panels, in that case because the word 'and' in the Elucidation of Article 49 of Law No. 3 of 2006 was read differently, and that the case took about five years to resolve.[17] Because Indonesia does not adopt a binding force of precedent, such differences can create legal uncertainty.[18] Setiawan and others also note conflicting Supreme Court jurisprudence on *ne bis in idem*.[19] Neither finding proves inconsistency in the cross-jurisdictional application of *ne bis in idem*: Adicahya addresses competence in an inheritance dispute, and Setiawan and others record the conflict in jurisprudence only in passing. Umam and others likewise show a Supreme Court that prioritises substantive justice over strict certainty when deciding jurisdiction between sharia arbitration and the

[14]Saepullah, 'Kewenangan Peradilan Agama', p. 209.
[15]Saepullah, 'Kewenangan Peradilan Agama', p. 212.
[16]Malik, Maloko, and Fatmawati, 'Strengthening Judicial Authority', pp. 250–52.
[17]Adicahya, 'Mengakhiri Ambiguitas', pp. 272, 278–80.
[18]Adicahya, 'Mengakhiri Ambiguitas', p. 272.
[19]Setiawan and others, 'Penerapan Asas Nebis In Idem', p. 194.

Religious Courts, which may point to a wider tendency but concerns a different question.[20] The difference between the Medan Religious Court, the Medan High Religious Court and the Supreme Court within one case shows only that approaches to decisions across jurisdictions are not yet uniform between levels of court, not that the Supreme Court itself is inconsistent. Decision No. 4 K/Ag/2026 is therefore better read as an affirmation on a foundation that still needs written guidelines, not as a definitive solution. A mapping of all jurisprudence on cross-jurisdictional *ne bis in idem* is needed to assess its consistency empirically.

**Implications for the Examination of the Substance of Cases in the Religious Courts**

Under Article 136 HIR, the exception of ne bis in idem is examined and decided together with the substance of the case, not in a separate interlocutory decision. A Religious Court judge facing an exception based on a cross-jurisdictional decision must assess the identity of subject, object and ground of claim and the positive nature and final status of the comparison decision, while examining the substance of the case. The judge must also trace the case history in other judicial jurisdictions, including the substance of the earlier decision, before ruling finally. The clerk notification mechanism between courts under SEMA No. 3 of 2002 can assist this tracing. In terms of simple, swift and low-cost justice, Setiawan and others criticise the fact that ne bis in idem cases are still examined like ordinary cases, so that the principle is not realised, and propose a preliminary examination like the dismissal process in administrative courts. In the case studied, a dispute over a 2003 contract produced at least three earlier cases in two judicial jurisdictions (Medan Religious Court 2016, Medan District Court 2020 and 2021) before the next claim, filed in the Medan Religious Court in 2024, ended at cassation in 2026. Without uniform technical guidelines, the assessment of similar exceptions may vary between panels.

[20]Umam and others, 'Between Sharia Arbitration and Religious Courts'.

## Conclusion

Supreme Court Decision No. 4 K/Ag/2026 affirms that ne bis in idem applies across judicial jurisdictions, on the teleological ground of avoiding conflicting judgments and achieving legal certainty. The affirmation is consistent with Article 1917 of the Civil Code, SEMA No. 3 of 2002 and earlier practice; its novelty lies in applying the principle to District Court decisions on a sharia economic dispute within the absolute competence of the Religious Courts, and in the differing approaches of the High Religious Court and the Supreme Court in the same case. The exception is examined together with the substance of the case under Article 136 HIR. A District Court decision on a dispute outside its competence can still serve as a basis for ne bis in idem when it is final, positive, and its lack of authority was never raised through legal remedies. This approach, however, risks validating decisions that exceeded authority, so it needs clear limiting criteria such as the four proposed here.

The legal implications are twofold: the approach strengthens legal certainty and prevents forum shopping, but it creates tension with the principle of absolute competence, adds to the substantive assessment burden of Religious Court judges, and may produce variation between panels in the absence of technical guidelines. The main strength of this review is that it connects the doctrine of ne bis in idem with the recent literature on Religious Court jurisdiction; its weakness is that it did not examine the full texts of the 2019 and 2021 District Court decisions, and that the proposed criteria have not been tested against other cases. Further research should map the jurisprudence on cross-jurisdictional ne bis in idem to assess its consistency empirically and examine whether the proposed criteria can be turned into written guidelines.

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