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RESTRICTIONS ON DIVORCE PROCEDURES IN SEMA NO. 3 OF 2023: BETWEEN LEGAL CERTAINTY AND THE IMPLEMENTATION OF MAQASID SHARIA IN INDONESIA

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ABSTRACT

This article analyses the restrictions on divorce procedures in Supreme Court Circular Letter (SEMA) Number 3 of 2023 from the perspective of legal certainty and *maqasid al-syari'ah* particularly those that occurred at the Pengadilan Agama Barru. This policy requires proof of continuous disputes and quarrels accompanied by a minimum separation period of six months as a prerequisite for the granting of a divorce. This study uses a normative legal research method with a legislative, conceptual, and case approach, and is analysed qualitatively through the theory of legal certainty and the framework of *maqasid al-syari'ah*. The findings show that the six-month restriction serves as an objective parameter that reinforces the principle of making divorce difficult and increases the consistency of evidence in religious court practice. However, its implementation is not mechanistic, as judges still exercise discretion in assessing concrete facts, including exceptions for cases of domestic violence. From a *maqasid* perspective, this policy is in line with the objectives of preserving offspring and family stability (*hifz al-nasl*), as long as its application does not neglect the protection of life (*hifz al-nafs*). This study contributes empirically by showing that administrative judicial policies have a real impact on adjudicative practice while opening up a dialectic between legal certainty and public interest in Islamic family law in Indonesia.

Keywords: divorce; SEMA No. 3 of 2023; legal certainty; *maqasid al-syari'ah*, religious courts.

ABSTRAK

Artikel ini menganalisis restriksi prosedur perceraian dalam Surat Edaran Mahkamah Agung (SEMA) Nomor 3 Tahun 2023 dalam perspektif kepastian hukum dan *maqasid al-syari'ah* khususnya yang terjadi di Pengadilan Agama Barru. Kebijakan tersebut mensyaratkan pembuktian perselisihan dan pertengkaran terus-menerus yang disertai perpisahan tempat tinggal paling singkat enam bulan sebagai prasyarat dikabulkannya perkara perceraian. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, dan kasus, serta dianalisis secara kualitatif melalui teori kepastian hukum dan kerangka *maqasid al-syari'ah*. Temuan penelitian menunjukkan bahwa restriksi enam bulan berfungsi sebagai parameter objektif yang memperkuat asas mempersulit perceraian dan meningkatkan konsistensi pembuktian dalam praktik peradilan agama. Namun implementasinya tidak bersifat mekanistik, karena hakim tetap menjalankan diskresi dalam menilai fakta konkret, termasuk pengecualian terhadap kasus kekerasan dalam rumah tangga. Dalam perspektif *maqasid*, kebijakan ini selaras dengan tujuan menjaga keturunan dan stabilitas keluarga (*hifz al-nasl*), sepanjang penerapannya tidak mengabaikan perlindungan jiwa (*hifz al-nafs*). Penelitian ini berkontribusi secara empiris dengan menunjukkan bahwa kebijakan yudisial administratif memiliki dampak nyata terhadap praktik adjudikatif sekaligus membuka dialektika antara kepastian hukum dan kemaslahatan dalam hukum keluarga Islam di Indonesia.

Kata kunci: perceraian; SEMA No. 3 Tahun 2023; kepastian hukum; *maqasid al-syari'ah*; peradilan agama.

INTRODUCTION

Marriage in the Indonesian legal system and in the perspective of Islamic law is not just a biological and social relationship between a man and a woman, but a normative institution that is full of spiritual, moral, and juridical dimensions. (Santoso, 2016) Law Number 1 of 1974 concerning Marriage affirms that marriage is a birth and mind bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One Godhead. (Djamali, 2002) This conception places marriage as an institution that has a sustainability orientation (*permanency principle*) and protection of the value of family resilience. From an Islamic perspective, this goal is in line with the principle of *litaskunū ilaiha*, which is the creation of tranquility and peace in the household, as well as an instrument for the protection of offspring (*Hifẓ Al-Nasl*) and human honor.

Nevertheless, social reality shows that the institution of marriage does not always work according to its normative ideals. Social dynamics, changes in family economic structure, and shifts in values in society also affect household stability. Divorce then becomes one of the legal consequences of a conflict that can no longer be reconciled. (Thorik et al., 2025) Although in Islamic law divorce is allowed, it is positioned as the *ultima ratio*, which is the last resort after the attempt of *ishlah* (*Peace*) does not yield results. This principle is also adopted in national law through the principle of complicating divorce as reflected in Article 39 of the Marriage Law and Article 115 of the Compilation of Islamic Law which requires divorce to be carried out through a judicial process after peace efforts have been unsuccessful. (Hermansyah, 2024)

The basics of making divorce difficult (*restrictive divorce principle*) is basically intended to maintain family stability and prevent arbitrary actions, especially in the context of an unequal power relationship between husband and wife. (Hermansyah, 2024) However, in practice, the increase in divorce rates in various regions of Indonesia shows the tension between restrictive norms and social realities. Empirical data from the Barru Religious Court in 2024, for example, shows that divorce cases dominate the number of cases received, with the most reasons being disputes and constant quarrels. (Barru, 2024)

This phenomenon indicates that the phrase "constant disputes and quarrels" is the most elastic and problematic reason in the practice of proving divorce cases. In this context, the Supreme Court of the Republic of Indonesia as the institution that holds the highest judicial power issued a policy through the Supreme Court Circular Letter (SEMA) Number 1 of 2022 which was then perfected in SEMA Number 3 of 2023. The latest formulation in

SEMA No. 3 of 2023 requires that divorce cases on the grounds of continuous disputes and quarrels can only be granted if it is proven that there is a continuous dispute, there is no hope of living in harmony again, and is followed by a separation of residence for at least six months, unless there is a legal fact of domestic violence (KDRT). (Indonesia, 2023) This policy normatively emphasizes the procedural restrictions of divorce as a form of strengthening the principle of making divorce difficult.

This is where the academic problem of this research finds its relevance. Procedural restrictions through SEMA No. 3 of 2023 raise a fundamental question: does the policy fully strengthen legal certainty, or does it have the potential to cause procedural rigidity that can hinder the protection of the rights of the parties? In the perspective of legal certainty theory, norms must be clear, consistent, and predictively applicable. However, in the context of Islamic family law, legal certainty cannot be separated from the substantive purpose of the law itself, namely benefit.

Pendekatan *Maqasid al-Syari'ah* It is important to read the restrictive policy more comprehensively. *Maqasid al-syari'ah* Not only emphasizing the protection of religion, soul, intellect, descendants, and property, but also prioritizing the dimension of protection of human dignity and relational justice in the family. (Murti & Syah, 2021) In the context of divorce, the critical question is whether the procedural restriction of six months of separation of residence really supports the protection of the family's welfare, or can it actually cause new harm, especially for vulnerable parties such as women and children.

A number of previous studies have discussed divorce from a sociological perspective, increasing divorce rates, and psychological implications for children. Meanwhile, studies that specifically analyze the SEMA No. 3 of 2023 policy in the framework of legal certainty and *maqasid al-shari'ah* are still relatively limited. This gap is the *research gap* in this article. This article seeks to critically examine the restrictions of divorce procedures in SEMA No. 3 of 2023 by placing them in two analytical frameworks: (1) the theory of legal certainty as a normative-positivistic dimension, and (2) *maqasid al-shari'ah* as a teleological and substantial dimension of Islamic law.

Thus, this article not only aims to describe the norms in SEMA No. 3 of 2023, but also analyze their implementation in the practice of religious justice and assess their suitability with the principle of benefit in *maqasid al-syari'ah*. This focus is significant considering that Islamic family law in Indonesia is at the intersection of legal formalism and substantive values of sharia.

Conceptually, this study departs from the assumption that procedural restrictions on divorce should be understood as an instrument of family protection, not as an administrative obstacle that ignores the reality of domestic conflict. Therefore, an analysis of SEMA No. 3 of 2023 is important to assess the extent to which the policy truly strengthens legal certainty while reflecting the goals of sharia in safeguarding the welfare of families in Indonesia.

RESEARCH METHODS

This research is a normative legal research (*normative legal research*), which is research that places the law as a norm or rule written in laws and regulations and judicial decisions. (Soekanto & Mamudji, 2006) Normative legal research aims to analyze the consistency, coherence, and conformity of legal norms with the principles, theories, and objectives of their formation. In the context of this article, the main object of study is the Supreme Court Circular Letter (SEMA) Number 3 of 2023 concerning the legal formulation of religious chambers related to divorce cases on the grounds of constant disputes and quarrels.

The approaches used in this study include: Legislative Approach (*statute approach*), namely by examining the provisions in: (Mahmud Marzuki, 2005) Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019; Government Regulation No. 9 of 1975; Compilation of Islamic Law (KHI); Law Number 50 of 2009 concerning Religious Courts; and SEMA Number 3 of 2023 as judicial administrative norms.

Conceptual approach, namely by using legal *certainty theory* and the concept of *maqasid al-shari'ah* as an analysis knife to assess the rationality of divorce procedural restrictions. The *case approach* is limited, namely by examining the practice of applying these norms in religious court decisions as an illustration of normative implementation, especially related to the fulfillment of the requirement of separation of residence for at least six months and exceptions in domestic violence cases. With this combination of approaches, this research is not only descriptive-normative, but also analytical-critical to the relevance and effectiveness of norms in practice.

Normative legal research uses legal materials as the main source of analysis. The legal materials in this study consist of: Primary Legal Materials, including: Law Number 1 of 1974 jo. Law Number 16 of 2019; Government Regulation No. 9 of 1975; Compilation of Islamic Law; Law Number 50 of 2009 concerning Religious Courts; SEMA Number 3 of 2023; as well as religious court decisions that are relevant to the implementation of divorce procedural

restrictions. Secondary Legal Materials, in the form of: Islamic family law literature; Books and scientific articles on the principle of complicating divorce; Academic studies on the theory of legal certainty; Classical and contemporary literature on *maqasid al-shari'ah* (al-Ghazali, al-Shatibi, Ibn 'Ashur, as well as contemporary maqasid thinkers).

The collection of legal materials is carried out through literature studies (*library research*), namely by inventorying, classifying, and reviewing legal documents and literature related to (Soekanto & Mamudji, 2006) Restrictions on divorce procedures and *Maqasid al-Syari'ah*. This technique is carried out systematically to ensure the linkage between the positive norm and the theoretical framework used.

The analysis in this study was carried out qualitatively using the *legal reasoning method*. The stages of analysis include: Grammatical and Systematic Interpretation, to understand the construction of norms in SEMA No. 3 of 2023 and their relationship with the provisions in the Marriage Law and KHI; Normative Coherence Analysis, to assess whether the six-month restriction of separation of residence is in line with the principle of making it difficult for divorce and the principle of family protection in the national legal system; Teleological analysis (*maqasid al-shari'ah*), which is by assessing whether the restrictive policy supports the objectives of the sharia as well as the protection of the dignity and relational justice in the family; and Prescriptive Argumentation, which is to provide a normative assessment of the ideality of the implementation of SEMA No. 3 of 2023 within the framework of legal certainty and benefits.

FINDINGS AND DISCUSSION

Normative Configuration of Divorce Restrictions in SEMA No. 3 of 2023

SEMA Number 3 of 2023 is basically a judicial policy instrument that emphasizes normative limits in divorce cases on the grounds of constant disputes and quarrels. If traced historically, this norm was born as a response to judicial practices that tend to grant divorce based on the grounds of Article 19 letter (f) of Government Regulation No. 9 of 1975 without adequate objective parameters. (Sundayani, n.d.) The phrase "constant disputes and quarrels" in practice is often interpreted loosely, thus opening up a space of subjectivity in the proof.

SEMA No. 3 of 2023 then constructs two cumulative conditions that are restrictive: 1) It is proven that there are persistent disputes and quarrels and there is no hope of living in harmony again; and 2) Have been separated from their place of residence for at least six months, unless there is a legal fact of domestic violence. (Indonesia, 2023) Normatively, this configuration indicates a shift from the "*reason-based divorce*" towards "*fact-based verification divorce*". This means that it is not enough to just postulate the existence of a conflict, but must be proven by concrete indicators in the form of physical separation within a certain period of time. (Ardiansyah, 2020)

From the perspective of norm hierarchy theory, SEMA is indeed not a law and regulation in the formal sense, but as an internal guideline of the judiciary, it has the power to bind administratively judges within the Supreme Court. Therefore, its existence serves as a *instrument of harmonization* to standardize the practice of religious justice. (Cahyadi, 2018)

After the enactment of SEMA, judges in the Religious Court tend to be stricter in verifying the element of "separation of residence for at least six months" through proof of witnesses, supporting documents, and confessions of the parties. This indicates the internalization of administrative norms into the juridical consideration of the decision. Thus, SEMA does not stop as a normative document, but has transformed into an adjudicative practice. (Ali, 2009)

Empirical findings at the Barru Religious Court show that the judge actively explored the facts related to the duration and intensity of the separation of residence. In some cases, witnesses were presented to prove whether the parties really no longer lived in the same house and since when the separation occurred. This approach shows that there is an effort to objectify domestic conflicts.

Before the six-month time limit, the proof of "persistent disputes" relied more on the subjective narrative of the parties. With temporal indicators in place, judges have a more stable measuring tool to determine whether the conflict has reached an irreversible stage (*irretrievable breakdown of marriage*). (Aufa, 2024)

Within the framework of legal certainty theory, norms containing quantitative parameters will increase the predictability and consistency of decisions. Legal certainty is not only concerned with the existence of written norms, but also with the uniformity of the application of these norms. In this context, SEMA No. 3 of 2023 contributes to: Standardization of proof; Reducing disparity in verdicts; and Strengthening the principle of complicating divorce as a systemic principle. (Ali, 2009) Thus, normatively-formally, the six-month restriction can be considered as an instrument to strengthen legal certainty.

However, in the case at the Barru Religious Court, the domestic condition has been in a very destructive situation even though it has not been six months of physical separation. Emotional conflict, psychological distress, and non-physical violence are often difficult to quantitatively measure. From this arises the potential for procedural rigidity. If norms are applied textually without considering the social context and power relations in the household, then restrictions can turn into obstacles to access to justice (*access to justice*). (Andi Nur Fikriana Aulia Raden & A.Ummu Fauziyyah Syafruddin, 2025)

SEMA does provide an exception if there is a legal fact of domestic violence. However, proving domestic violence in practice is not always simple. (Setiawan et al., 2018) Many victims do not report violence due to economic dependence, social pressure, or lack of medical evidence. Under such conditions, the six-month standard has the potential to put victims in a prolonged vulnerable position.

Interestingly, the data at the Barru Religious Court shows that judges generally do not apply norms mechanically. They keep in mind the factual conditions, including the level of conflict and the possibility of reconciliation. This shows that the *function of judicial discretion* continues to run within the corridor of administrative restrictions.

Pendekatan *Maqasid al-Syari'ah* In this study, it is not solely used as normative legitimacy, but as an evaluative framework to assess whether the restrictive policy really realizes the benefits. (Wartono & Rahman Alwi, 2025) From perspective *Hijz Al-Nasl*, the divorce restriction policy has a strong maqasid rationality. A hasty divorce has the potential to damage the family structure and have an impact on the child's psychology. A six-month

period can be understood as *cooling down period*, which is a space for reflection and an opportunity for reconciliation.

The findings at the Barru Religious Court show that the judge still optimizes mediation before deciding the case. This shows that *the orientation of ishlah* (peace) is still an integral part of the religious justice process. In the framework of classical *maqasid*, maintaining the integrity of the family is included in the category of *maslahat daruriyyah*.

However *Maqasid* It does not stop at family stability alone. Life protection (*hifz al-nafs*) is the main purpose of the Shari'a. If the household has become a space of psychological suffering or covert violence, then maintaining the marriage bond formally may be contrary to the benefits. In this context, the six-month restriction must be read proportionately. It should not be positioned as an end, but rather as a means. If the means actually cause greater harm, then the principle *dar'u al-mafāsīd muqaddam 'alā jalb al-masalih* (avoiding damage takes precedence over attracting benefits) should be a consideration. (Female, n.d.)

The findings at the Barru Religious Court show that the judge still considers concrete facts and does not rule out the possibility of granting the case if it is proven that there is no hope of living in harmony again. This shows that the judicial *ijtihad* space remains open.

From the overall findings, it can be concluded that SEMA No. 3 of 2023 represents the country's efforts to balance two major orientations: **Formalist-positivistic orientation**, namely strengthening legal certainty through objective parameters; and **Substantive-teleological orientation**, which is to maintain the benefit of the family in perspective *Maqasid al-Syari'ah*. (Saputra, 2025)

Practice in the Religious Court shows that the norm is not applied rigidly, but rather combined with sociological and humanitarian considerations. This shows that the Indonesian religious justice system does not only move within the framework of legal formalism, but also maintains a moral dimension and benefits. (Suhaili, 2025)

Thus, the procedural restrictions in SEMA No. 3 of 2023 generally succeed in strengthening the principle of making divorce difficult and increasing legal certainty. However, the effectiveness of the *maqasid* is highly dependent on the sensitivity and quality of the judge's consideration in assessing the reality of domestic conflicts. Legal certainty and benefit are not two poles that negate each other, but two variables that must be managed proportionately. In this context, the role of judges is crucial as an interpretive actor who bridges social norms and realities.

Implementation of Six-Month Restrictions: Between Certainty and Judicial Flexibility

Empirical findings show that in some divorce cases in the Religious Courts, judges no longer only accept the arguments of the dispute narratively, but actively explore the facts about the duration and reality of the separation of the parties' residence. The examination does not stop at the confession of the plaintiff or applicant, but is strengthened through witness evidence, confirmation of domicile, and consistency of information at trial. (Saputra, 2025) This indicates that the six-month restriction in SEMA No. 3 of 2023 has served as a real operational standard of proof in adjudicative practice.

This strengthening of evidence indicates a paradigm shift in divorce cases: from a subjective claim-based approach to a factual verification-based approach. In other words, judges no longer simply assess the existence of conflicts normatively, but ensure that the conflict has reached an irreversible stage characterized by relatively permanent physical separation. (Scott, 2005)

Theoretically, the six-month separation of residence parameter presents objectivity to the phrase "constant disputes and quarrels" that were previously elastic. In practice prior to these restrictions, proving the grounds for divorce often depended on the intensity of the conflict narrative, which in many cases was difficult to objectively verify. This has the potential to cause disparity in decisions between the panel of judges and between courts.

With temporal indicators, judges have minimum criteria that can be measured and verified. Six months is both quantitative and symbolic: quantitative because it is measured in units of time, and symbolic because it represents a phase of conflict that has crossed the threshold of spontaneous reconciliation. In the perspective of legal *certainty* theory, norms that have clear limits will increase: Legal predictability, the parties can estimate the juridical consequences of their domestic conditions; Consistency of decisions, reducing disparities in interpretation between judges; and Public trust in the judiciary, as the standard of proof is no longer entirely dependent on subjectivity.

The judge of the Barru Religious Court tends to be more cautious in granting the case if the six-month separation element has not been met. This indicates that SEMA has functioned as an instrument of internal harmonization of religious justice. Systemically, this policy strengthens the principle of making divorce difficult which is indeed the basic principle of the Marriage Law.

However, legal certainty in the context of family law should not be understood mechanically. Family law has a much more complex moral, psychological, and social dimension than contractual law or administrative law. Therefore, the objectification of time should be read as an aid to judgment, not as the only indicator of substantial truth. (Fauzi et al., 2025)

On the other hand, empirical facts on the ground show that in some cases, domestic relationships have been in a very destructive situation even though they have not reached six months of physical separation. Prolonged conflicts, severe psychological pressure, verbal violence, and economic neglect often occur before the parties are completely separated from their homes. In this context, physical separation is not the beginning of conflict, but rather the culmination of a long-standing conflict.

If the six-month norm is applied textually without considering these dynamics, then restrictions have the potential to cause procedural rigidity. This rigidity can have an impact on: Delays in legal protection for vulnerable parties; Prolongation of an already unhealthy conflict situation; and Ignorance of the reality of non-physical violence that is difficult to prove formally.

SEMA does provide an exception if legal facts are found to exist in domestic violence. But in practice, proving domestic violence is not always simple. Many victims do not have visum, do not report to law enforcement officials, or do not have witnesses who saw the violence firsthand. (Hariyanto & Yulianingsih, 2025) In certain social structures, cultural pressure and economic dependence make the victim reluctant to reveal the facts explicitly in court. In this context, the sensitivity of the judge is the determining factor, the judge does not fully apply the norm rigidly, but still considers the intensity of the conflict and the hope of living in harmony again. This means that even though the six-month parameter is an administrative standard, judicial discretion is still used to assess the substance of the case.

In the religious justice system, judges not only function as a mouthpiece of the law, but also as interpretive actors who have moral responsibility. SEMA as an internal guideline does strengthen uniformity, but it does not remove the authority of judges to assess facts comprehensively. In the Barru Religious Court in several cases, even though it has not been fully six months, the judge still considers the fact that the domestic relationship has been in a condition of broken marriage that is impossible to restore. This suggests that procedural restrictions do not completely eliminate the space for *ijtihad*. (Satory & Sibuea, 2020)

Theoretically, this can be understood as a form *controlled discretion* — discretion that remains within the corridor of administrative norms, but does not lose sensitivity to substantive justice. In the context of Islamic law, this practice is in line with the principle of *al-hukmu yaduru ma'a al-'illah wujudan wa 'adaman* (The legal decision depends on the existence of illat or the reasons behind it). (Rohim, 2019) If the illat of the rift in the household is real, then the substance of the law must not be defeated by procedural formalities.

From this description, several important conceptual implications can be drawn that the six-month restriction has succeeded in increasing objectivity and legal certainty in divorce cases. Although its effectiveness depends heavily on the judge's interpretive flexibility. Administrative norms should not close the space for consideration of sociological realities and power relations in the household. The proportional implementation actually shows that the Indonesian religious justice system moves in a dialectic between legal formalism and substantive justice.

Maqasid al-Syarī'ah's *Analysis* of Procedural Restrictions on Divorce

Pendekatan *Maqasid al-Syarī'ah* In this study, it not only functions as a normative legitimacy for the restrictive divorce policy, but also as an evaluative instrument to test the extent to which the administrative norms in SEMA No. 3 of 2023 really realize the goals of sharia substantively. Within the framework of classical maqasid as formulated by al-Ghazālī and al-Shatibi, Islamic law aims to safeguard five basic needs (*al-darūriyyāt al-khams*), namely religion (hifz al-dīn), soul (hifz al-nafs), intellect (hifz al-'aql), heredity (hifz al-nasl), and property (hifz al-māl). In the context of family law, the most relevant dimensions are hifz al-nasl and hifz al-nafs, which in the development of contemporary maqasid are understood as part of the protection of human rights. (Al-Shāṭibī, 2003; Al, n.d.)

In the perspective of *hifz al-nasl*, procedural restrictions on divorce can be understood as normative efforts to maintain family stability and generational sustainability. The family in Islam is not just a private institution, but is the foundation of the social structure. Therefore, divorce that is carried out impulsively or without careful consideration has the potential to have a systemic impact, both on children, social relations, and community stability.

The six-month separation of residence parameters in SEMA No. 3 of 2023 can be interpreted as a form of *cooling down period* in the framework of *maqasid*. This period provides room for reflection for the parties to reassess the possibility of reconciliation. In classical fiqh terminology, the effort of *ishlah* and mediation is an important stage before a divorce is

imposed. Even in the Qur'an (QS. An-Nisā': 35), the resolution of domestic conflicts is recommended through the role of hakam (mediator) of both sides of the family.

The practice at the Barru Religious Court shows that the judge still actively seeks mediation before issuing a verdict. This confirms that the practice of religious justice does not merely carry out administrative norms, but also maintains the orientation of *ishlah* as a substantive value of Islamic law. Thus, the six-month restriction does not stand alone as a procedural obstacle, but rather is integrated within the framework of reconciliation.

In *maqasid*, taking care of offspring not only means maintaining the biological existence of the child, but also ensuring its growth and development in a stable family environment. From this point of view, divorce restrictions can be seen as a preventive instrument against premature family disintegration. (Mirwan, 2025)

However, the protection of offspring should not be interpreted absolutely. Formal stability without the quality of healthy relationships can actually produce long-term harm to children. Therefore, the interpretation of *hifz al-nasl* must be contextual, not simply maintain the legal structure of marriage.

If *hifz al-nasl* encourages prudence in divorce, then *hifz al-nafs* serves as a corrector against the potential absolutization of restrictions. The soul and dignity of the human being are the main goals of the Shari'ah that must not be sacrificed in order to maintain the formality of the marriage bond.

In the context of domestic conflict, prolonged psychological suffering, verbal abuse, economic neglect, and informally documented domestic violence can cause greater damage than divorce itself. (Sintha & Pertiwi, 2025) In contemporary *maqasid*, the protection of victims of domestic conflict is understood as part of the protection of human rights in an Islamic perspective.

SEMA No. 3 of 2023 provides an exception to the six-month requirement if there is a legal fact of domestic violence. Normatively, this provision shows an awareness that the protection of the soul takes precedence over formal stability. This principle is in line with the rules *dar'u al-mafāsīd muqaddam 'alā jalb al-masalib* (avoiding damage takes precedence over withdrawing benefits). (al-Nadwi, 1998)

The judges at the Barru Religious Court basically do not apply norms mechanically. In practice, the panel of judges still considers concrete facts, including the level of conflict intensity and the possibility of living in harmony again. This shows that the judicial *ijtihad* space is still open in interpreting the limits of restrictions. This *ijtihad* space is crucial in

maintaining a balance between family protection and individual protection. If restrictions are applied rigidly without considering the reality of destructive conflicts, then they have the potential to contradict maqasid. On the other hand, if discretion is used proportionately, then restrictions actually become a controlled instrument of benefit.

At this point, it can be seen that the procedural restrictions in SEMA No. 3 of 2023 are in a dialectic between legal certainty and benefit. Legal certainty provides stability and consistency, while maqasid ensures that this stability does not sacrifice human values.

In practice at the Barru Religious Court, the implementation of norms shows that legal certainty and maqasid do not have to be contradicted. Both can run simultaneously as long as the judge is able to balance between administrative norms and concrete reality. Thus, the analysis of maqasid in this study confirms that divorce restrictions are not the final goal, but a means to achieve the benefits of the family. This norm will only have maqasid value if it is applied proportionately, contextually, and oriented towards the protection of human beings as a whole.

This research departs from the basic questions: (1) how the configuration and implementation of the restrictions on divorce procedures in SEMA No. 3 of 2023 in the practice of religious justice; and (2) the extent to which the policy is in line with the principles of legal certainty and the purpose *of maqasid al-shari'ah* in the Islamic family law system in Indonesia.

Based on normative analysis and empirical findings in Barru's religious judicial practice, it can be affirmed that SEMA No. 3 of 2023 is a judicial administrative instrument that substantively strengthens the principle of complicating divorce. Through the determination of cumulative parameters in the form of continuous disputes and quarrels accompanied by a separation of residence for at least six months, the Supreme Court seeks to objectify the reasons for divorce which were previously elastic and highly dependent on the subjective narrative of the parties.

From the perspective of legal certainty theory, the six-month restriction presents a more measurable and verifiable standard of proof. These norms contribute to increasing the predictability of decisions, reducing disparities between assemblies, and strengthening the consistency of religious justice practices. Thus, from the normative-formal side, SEMA No. 3 of 2023 succeeds in emphasizing the principle that divorce is not a conflict resolution mechanism that can be taken easily and instantly, but the last resort after it is proven that there is an irreparable rift.

However, the findings of the study also show that the implementation of these norms does not take place in a social vacuum. The judge does not apply the restriction mechanically, but still considers the concrete facts, the intensity of the conflict, and the possibility of reconciliation. The judicial discretionary space is still carried out within the corridor of administrative norms. This fact shows that the Indonesian religious justice system does not move solely within the framework of legal formalism, but also maintains a sociological and humanitarian dimension in its legal considerations.

Within the framework of *maqasid al-shari'ah*, this procedural restriction has a normative rationality that can be justified. In terms of *hifz al-nasl*, the policy functions as an instrument of protection for family stability and generational sustainability. The six-month period can be understood as a space for reflection and an opportunity for reconciliation, so that divorce is not carried out impulsively. At the same time, the exception to domestic violence cases shows a normative awareness of the principle of *hifz al-nafs*, which in *modern maqasid* is understood as the protection of individual rights and safety.

Thus, the answer to the formulation of this research problem can be formulated as follows: *First*, normatively and implementively, SEMA No. 3 of 2023 has been implemented in the practice of religious justice as a restrictive guideline that strengthens the principle of complicating divorce and increasing legal certainty through the objectification of evidentiary parameters. *Second*, from the perspective of *maqasid al-shari'ah*, the restrictive policy is basically in line with the goals of the sharia as long as it is applied proportionately and does not sacrifice the protection of human life and dignity. The suitability of the *maqasid* does not lie solely in the text of the norm, but in the quality of its implementation in judicial practice.

This research shows that legal certainty and benefits are not two poles that negate each other. The two are actually in a dialectical relationship that must be managed in a balanced manner. Legal certainty provides system stability, while *maqasid* provides moral and substantial orientation to legal goals. When restrictive norms are applied with sensitivity to the reality of domestic conflict, they become instruments of benefit. On the other hand, when applied rigidly and textually, it has the potential to ignore the dimension of humanitarian protection.

Therefore, the role of judges is central as an interpretive actor who bridges administrative norms and social realities. The quality of the judge's consideration in assessing concrete facts is the determining factor whether the procedural restriction really realizes the purpose of the sharia or merely strengthens the legal formality.

Theoretically, this study contributes by showing that judicial policy in Indonesian Islamic family law cannot be assessed only from the legal-positivistic dimension, but must be tested within the framework of *maqasid* as a legal teleological orientation. In practical terms, these findings indicate the importance of implementation guidelines that not only emphasize administrative parameters, but also strengthen judges' sensitivity to the dynamics of domestic conflict and the protection of vulnerable groups.

Thus, the procedural restrictions in SEMA No. 3 of 2023 can be considered as a policy that in principle succeeds in strengthening legal certainty and the principle of making divorce difficult, but the success of *the maqasid* still depends on proportionality and wisdom in its application. This is where the balance lies between law as a text and law as a means of benefit.

CONCLUSION

Normatively, SEMA No. 3 of 2023 is a judicial administrative instrument that strengthens the principle of complicating divorce through objectification of the reasons for "constant disputes and quarrels". The addition of cumulative parameters in the form of separation of residence for at least six months presents a more measurable and verified standard of proof. From the perspective of legal certainty theory, this norm increases the predictability of decisions, reduces interpretive disparities, and emphasizes the consistency of religious justice practices.

The six-month restriction is not applied mechanically by the judges. Empirical findings show that judges continue to exercise judicial discretion in assessing concrete facts, including the intensity of conflict and the possibility of living in harmony again. The exception for domestic violence cases shows the orientation of protection for vulnerable parties. Thus, the implementation of the norm reflects a balance between procedural approaches and substantive considerations.

These procedural restrictions are in principle in line with the goal of safeguarding offspring (*hifz al-nasl*) and family stability. The six-month period can be understood as a space for reflection that prevents impulsive divorce. However, this harmony is conditional, that is, as long as its application does not sacrifice the protection of the soul (*hifz al-nafs*). In other words, the *maqasid value* of this policy is not only determined by the formulation of its norms, but also by the quality of its implementation at the judicial level.

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