

JUDGES' CONSIDERATIONS IN DIVORCE CASES DUE TO BROKEN MARRIAGE: AN ANALYSIS OF CONTEMPORARY ISLAMIC FAMILY LAW

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Abstract

Purpose - This study aims to analyze the implementation of Supreme Court Circular Letter (SEMA) Number 1 of 2022 in divorce cases at the Yogyakarta Religious Court, especially in case Number 119/Pdt. G/2024/PA.YK using Contemporary Islamic Family Law. This regulation stipulates formal requirements for divorce, including the provision of a minimum of six months of separation from home for couples who apply for divorce on the grounds of continuous disagreement (broken marriage). This study examines the judge's reasoning in granting a divorce, even though these requirements have not been fully met.

Method - Normative legal methods are used with a document study approach or literature research. This study focused on the decision of Yogyakarta Religious Court Number 119/Pdt. G/2024/PA.YK. The analysis focuses on court decisions with permanent legal force to understand the application of regulations in judicial practice by analyzing them using *maqāṣid al-sharī'ah* theory and Judge Discretion theory.

Findings - The results showed that even though the six-month separation requirement had not been met, the panel of judges still granted divorce because the dispute had not subsided (broken marriage), and there was no hope for reconciliation. This indicates flexibility in applying SEMA Number 1 Year 2022 following the actual conditions of the disputing couple.

Research contribution/limitations - Theoretically, this study enriches the contemporary Islamic family law literature and provides insights into policies in Religious Courts. This study offers policy recommendations for applying SEMA No. 1 in 2022 to increase legal certainty in divorce cases. However, the limitation of this research is that its scope is limited to one particular case; therefore, further research with a broader scope is needed.

Originality/value - The originality of this research lies in the empirical analysis of the implementation of SEMA No. 1 of 2022 in recent divorce cases, which has not been specifically studied. This study contributes to the development of contemporary Islamic legal theory and provides practical solutions for the world of justice and family law policies in Indonesia.

Keywords: Implementation of SEMA, Divorce, *Maqāṣid al-Sharī'ah*, Contemporary Islamic Law, Broken Marriage

Abstrak

Purpose - Penelitian ini bertujuan untuk menganalisis implementasi Surat Edaran Mahkamah Agung (SEMA) Nomor 1 Tahun 2022 dalam perkara perceraian di Pengadilan Agama Yogyakarta, khususnya pada perkara Nomor 119/Pdt.G/2024/PA.YK menggunakan Hukum Keluarga Islam Kontemporer. Regulasi ini menetapkan persyaratan formal perceraian, termasuk ketentuan tentang minimal enam bulan berpisah rumah bagi pasangan yang mengajukan cerai dengan alasan perselisihan terus-menerus (*broken Marriage*). Studi ini meneliti dasar pertimbangan hakim dalam mengabulkan gugatan cerai meskipun syarat tersebut belum sepenuhnya terpenuhi.

Method - Penelitian menggunakan metode hukum normatif dengan pendekatan studi dokumen atau penelitian kepustakaan. Studi difokuskan pada putusan pengadilan Agama Yogyakarta Nomor 119/Pdt.G/2024/PA.YK. Analisis difokuskan pada putusan pengadilan yang telah berkekuatan hukum tetap untuk memahami penerapan regulasi dalam praktik peradilan dengan menganalisisnya menggunakan teori *Maqāṣid al-Sharī'ah* dan teori *Diskresi Hakim*.

Findings - Hasil penelitian menunjukkan bahwa meskipun syarat enam bulan berpisah rumah belum terpenuhi, majelis hakim tetap mengabulkan perceraian dengan mempertimbangkan fakta perselisihan yang tidak kunjung reda (*broken marriage*) dan tidak adanya harapan untuk rujuk. Hal ini mengindikasikan adanya fleksibilitas dalam penerapan SEMA Nomor 1 Tahun 2022 sesuai dengan kondisi nyata pasangan yang bersengketa.

Research contribution/limitations - Secara teoritis, penelitian ini berkontribusi pada pengayaan literatur hukum keluarga Islam kontemporer serta memberikan wawasan terkait kebijakan di Peradilan Agama. Secara praktis, penelitian ini menawarkan rekomendasi kebijakan mengenai penerapan SEMA Nomor 1 Tahun 2022 untuk meningkatkan kepastian hukum dalam kasus perceraian. Namun, keterbatasan penelitian ini adalah ruang lingkupnya yang terbatas pada satu kasus tertentu, sehingga diperlukan penelitian lebih lanjut dengan cakupan lebih luas.

Originality/value - Keaslian penelitian ini terletak pada analisis empiris terhadap implementasi SEMA Nomor 1 Tahun 2022 dalam perkara perceraian terbaru, yang belum banyak dikaji secara spesifik. Nilai penelitian ini tidak hanya berkontribusi pada pengembangan teori hukum Islam kontemporer tetapi juga memberikan solusi praktis bagi dunia peradilan dan kebijakan hukum keluarga di Indonesia.

Kata Kunci: Implementasi SEMA, Perceraian, *Maqāṣid al-Sharī'ah*, Hukum Islam Kontemporer, *Broken Marriage*

INTRODUCTION

Divorce, according to Islam, is considered a way out of domestic problems. If divorce cannot be avoided, it is permissible to divorce before the court, as in Law No. 1 of 1974, providing the legality to do so (Dahwadin et al., 2020). From the perspective of the Islamic Family Law applicable in Indonesia, several reasons can be submitted by a married couple to file for divorce. Article 116 of the Compilation of Islamic Law (KHI) states that one of the reasons that can be used for divorce is the occurrence of continuous fighting that cannot be reconciled (Alamah, 2021).

On February 14, 2022, Indonesia's Central Bureau of Statistics reported that the number of divorces in Indonesia in 2021 reached 447,743. According to Indonesia's Central Bureau of Statistics, there are many causes of divorce, including infidelity, domestic violence, economic problems, the abandonment of one of the parties, and continuous disputes and arguments (Idris et al., 2024).

In recent years, the Supreme Court has refined its policies regarding settling divorce cases in religious courts. This stems from two interpretations of the provisions stipulated in Supreme Court Circular Letter (SEMA) Number 1 of

2022 (Baharuddin & Iman, 2020). This difference in interpretation creates uncertainty in legal practice, especially regarding the conditions that must be met for a divorce suit to be granted (Rasyid, 2024).

At the end of 2023, the Supreme Court issued SEMA Number 3, Year 2023, to clarify the application of divorce rules. One of the main changes in this rule is the affirmation that couples seeking divorce on the grounds of constant quarrels must prove that they have lived separately for a minimum of six months. However, this provision is excluded if there is evidence that one party has committed domestic violence (Imron, 2016).

In addition, the latest SEMA also stipulates that divorce can only be granted if the condition has lasted for at least 12 months because one partner is not fulfilling their obligations (Santoso et al., 2023). Thus, this policy emphasizes the importance of proof, and provides a more precise time limit before a divorce claim can be accepted. The Yogyakarta Religious Court in case number 119/Pdt. G/2024/PA.YK issued a decision granting the divorce of a couple who had been separated six months previously. In case number 119/Pdt.G/2024/PA.YK, the lawsuit was filed by the wife at the Yogyakarta Religious Court on February 20, 2024, on the grounds of continuous quarrels since 2018 without domestic violence, and the couple has been separated since November 2023.

In one of his considerations, the judge stated that even though Plaintiff and Defendant had not yet reached 6 months of separation from the house as stated in SEMA Number 1 of 2022, because the dispute was such and because the defendant, in his conclusion, also stated "If there is an eventual divorce, the Defendant requests his right to meet his children," the lawsuit was granted by a panel of judges. Based on this, it would be interesting to study the implementation of SEMA Number 1 in 2022 in the Yogyakarta Religious Court (Analysis of Divorce Decision Number 119/Pdt. G/2024/PA.YK).

This study discusses the Implementation of Sema Number 1 in 2022 in the Yogyakarta Religious Court (Study of Divorce Decision Number: 119/Pdt. G/2024/PA.YK). However, researchers will first examine the scientific works related to this discussion. Compilation of Articles by Muhammad Ilham Azizul Haq, Yasniwati, Yaswirman titled "Settlement of divorce disputes in the Religious Courts after the enactment of SEMA Number 1 of 2022 (Haq et al., 2023).

This research uses normative juridical research methodology, which is based on the theory of legal discovery by judges, *the maqāṣid al-sharī'ah* theory, and the theory of the purpose of marriage. The subject matter in decision number 492/Pdt. G/2023/PA.Pn, in the verdict, the judge rejected the petition for divorce by *Verstek* because the parties had only been separated for three

months, so it did not fulfill the rules of SEMA Number 1 of 2022. According to the research that has been conducted, the judge's consideration in the decision was too summarized, namely, not trying to see the truth and the motive of the applicant for divorce; thus, so then concluding that the applicant could not prove the arguments of his petition regarding the reasons for divorce was a rash act that could hurt the parties' sense of justice.

Research by Hanfi Ilba and Ibnu Radwan Siddik (2024) discussed the Supreme Court's Decision No. 421 K/Ag/2023, which annulled divorce at the first and appeal levels, because the parties had not separated for six months, as stipulated in SEMA No. 1 of 2022. This study uses the divorce theory of *Shiqqāq*, according to Shafi'i *Madhhab*, which emphasizes the importance of reconciling the couple before bringing the case to the judge. From the perspective of Shafi'i *Madhhab*, the Supreme Court's decision is considered too restrictive for couples to resolve domestic conflicts (A. Rasyid et al., 2024). This study also utilizes Ash-Syatibi's *Maqāṣid al-Sharī'ah* Theory and the theory of judges' discretion, highlighting that legal policies should consider the benefit (Tabrani, 2018). They concluded that the six-month home separation requirement can delay divorce settlements and create legal uncertainty for couples experiencing serious conflict (Mansyur, 2020).

According to Ash-Syatibi, Shari'a aims to realize human benefits in this world and hereafter. This *Maqāṣid* is divided into three types: *al-ḍarurīyah*, *al-ḥājīyah* and *al-taḥsinīyah*. *Al-ḍarurīyah* is the highest and most basic *Maṣlahah* because without it, humans would not be able to live (asy-Syathibi, n.d.). *Maṣlahah al-Ḥājīyah* is an easy problem, avoiding humans from difficulty and distress. However, the absence of *Maṣlahah al-Ḥājīyah* did not damage the world. *Maslahah al-taḥsinīyah* complements or completes the previous two *maqāṣid* fields (asy-Syathibi, n.d.) including customs and noble morals. For the *maslahah al-ḍarurīyah*, *al-ḥājīyah* and *al-taḥsinīyah* must be adequately fulfilled; therefore, one must maintain and fulfill them in all areas, including worship, customs, *mu'āmalah*, and *jināyah* (Auda, 2007).

Some previous studies have highlighted legal foundations such as *maqāṣid al-sharī'ah* and freedom of religion. Other studies have also reviewed how judges consider various psychological, economic, and social factors in their divorce decisions (Elviandari et al., 2018). However, studies specifically addressing the implementation of SEMA No. 1 in 2022 and its improvement in SEMA No. 3 in 2023 are rare. Studies that discuss these regulatory changes in the context of their implementation in Yogyakarta Religious Courts have not been conducted. Therefore, this study aims to fill this gap in contemporary Islamic legal studies by

examining the impact of regulatory changes on court decisions and the divorce process.

In terms of novelty, this study presents a more contextual perspective on changes in divorce laws in Indonesia (Nizar, 2021). This study not only discusses the normative aspects of the existing regulations but also analyzes how the new rules are applied in judicial practice and the extent to which these rules provide legal certainty for the community. In addition, this study also examines the impact of divorced couples' rights protection, especially in cases of domestic violence and negligence in carrying out household obligations (Yasa & Iriyanto, 2023). Thus, this study contributes to the development of Islamic law in the contemporary era, especially family law. The results of this research are expected to serve as a reference for academics, legal practitioners, and policymakers to understand the dynamics of divorce in Indonesia and support a more adaptive and equitable legal system.

This research aims to analyze the implementation of SEMA No. 1 of 2022 and SEMA No. 3 of 2023 in settling divorce cases due to broken marriages at the Yogyakarta Religious Court, especially in Decision Number 119/Pdt. G/2024/PA.YK used the lens of Contemporary Islamic Family Law. This study was conducted to understand how these policies are applied in judicial practice and the extent to which regulatory changes impact the legal

divorce process. In addition, this study also seeks to identify significant differences between the two SEMA and how the new provisions affect divorce procedures and filing requirements, particularly concerning the obligation to separate for a minimum of six months as one of the conditions for divorce, except in cases of domestic violence.

In addition, this research aims to evaluate the consistency and legal certainty of divorce decisions that follow the latest provisions. With the change in rules, it is important to see how judges apply this policy, and whether it is under the principles of justice for both parties. The implications of this rule on the rights and protection of divorced couples is also one of the focuses of this research, especially in fulfilling the rights of wives and husbands in the divorce process (Barhamudin, 2019).

RESEARCH METHOD

This is normative legal research, which means that the main focus of the study is document or library research (Efendi & Ibrahim, 2021). The primary data in this research are court decisions assisted by regulatory and statutory documents, books, journals, theses, and other documents. The approach in this research is a case study (case approach) that examines issues related to the issue at hand, which is already in the form of a decision that is *inkirāh* (legally binding) (Marzuki, 2015). In this study, we analyze the implementation and considerations of Yogyakarta Religious

Court judges in the decision to divorce case number 119/Pdt. G/2024/PA.YK, which does not follow SEMA Number 1 of 2022 using *maqāṣid al-sharī'ah* and Judge Discretion Theory (Syuib & Filzah, 2019).

The data collection technique used in this study was conducted by conducting a literature study or library research. A literature review systematically reviews and analyzes official documents in research as a benchmark consisting of the objects, themes, and problems to be studied. For this research, the data collection came from a continuous literature study, with the discussion being the formal requirements for divorce in SEMA Number 1 of 2022, court decisions, official documents, laws and regulations, Supreme Court regulations, books, legal dictionaries, books of *fiqh*, legal journals, theses, and others.

RESEARCH RESULT AND DISCUSSION

Supreme Court Policy on Divorce Cases Due to Broken Marriages

The Supreme Court Circular Letter (SEMA) No. 1 of 2022, which came into effect on December 15, 2022, aimed to ensure a more consistent and unified application of the law in divorce cases in Religious Courts. One of the main points of this policy is to stipulate that a divorce claim on the grounds of continuous quarrels can only be granted if there is evidence of a prolonged dispute or separation of residence for at

least six months (Haq et al., 2023). The formulation of the Religious Chamber in this SEMA emerged as a response to the various dynamics that occur in divorce law. One of the primary considerations is that many divorce cases are filed not as an effort to break the bond of marriage but only as a form of bluff against the spouse. In addition, SEMA aims to change the perception that the Religious Court only functions as an institution for legalizing divorce by strengthening its role in maintaining household resilience before making legal decisions.

Furthermore, this policy reflects the application of marriage law, which emphasizes the principle of prudence and seeks to make divorce more difficult as a form of protection for the institution of marriage (Aguirre, 2022). With a minimum time limit of six months for divorce cases, judges are expected to be able to hear more efficiently and make more uniform decisions on divorce cases filed on the grounds of continuous quarrels. This will improve the consistency of the law and provide greater legal certainty for couples filing for divorce (Pasteels & Mortelmans, 2017).

From a practical perspective, SEMA No. 1 of 2022 provides much needed clarity and direction for judges in their duties. Normatively, SEMA No. 1 of 2022 strengthens the Supreme Court's authority in providing binding legal interpretations. Normatively, SEMA No. 1 of 2022 strengthens the authority of the

Supreme Court in providing binding legal interpretations. Through supervision and direction by the Supreme Court, SEMA helps ensure that justice is applied equally throughout Indonesia. SEMA's practical and normative implications show that this circle is important in maintaining integrity and professionalism in the justice system (Santoso et al., 2023).

The results of this study indicate that the implementation of Supreme Court Circular Letter (SEMA) No. 1 of 2022 in divorce cases at the Yogyakarta Religious Court reflects efforts to harmonize family law policies in Indonesia with the principle of protecting the institution of marriage. With the six-month separation of residence requirement, judges have more explicit guidelines for assessing the validity of divorce claims. However, this policy also has legal consequences, especially for couples who experience unhappiness or domestic violence because they are hampered in obtaining quick and effective decisions (Karyadi & Saraswati, 2022).

Compared to previous research, this finding aligns with Hanfi Ilba and Ibnu Radwan Siddik's study, which discusses the application of SEMA No. 1 of 2022 in Supreme Court Cassation Case No. 421 K/Ag/2023. The study revealed that the six-month time limit in divorce could potentially complicate the resolution of household conflicts, especially for parties facing conditions that are not feasible to maintain marriage (Lippman

& Lewis, 2008). This indicates the existence of similar interpretative differences and implemented constraints in the case study. From the perspective of Islamic legal theory, this research's results can be studied through *maqāṣid al-sharī'ah*, which emphasizes the benefits and protection of individuals in Islamic law (Zuhdi et al., 2024). Thus, the results of this study enrich the discourse on contemporary Islamic family law in Indonesia and provide recommendations so that this policy can better consider aspects of the social context and substantive justice in its implementation (Muqoddas, 2019).

At the end of 2023, the Supreme Court again issued SEMA Number 3, Year 2023 to clarify the application of divorce rules. SEMA Number 3 of 2023 is a revision of SEMA Number 1 of 2022, which previously caused differences in the interpretation among judges in handling divorce cases. The revision highlights the six-month separation of residence requirements as the primary indicator for granting divorce claims based on continuous disputes and quarrels. In this latest rule, the provision clarifies that divorce can only be granted if the couple has been proven to have experienced prolonged disputes and quarrels that no longer allow them to live in harmony, and is supported by the fact that they have been separated for at least six months. However, an exception is made for cases of domestic violence, where the victim is not required to fulfill the six-month separation requirement to

file for divorce. This revision provides firmer and more objective guidelines for judges in adjudicating divorce cases, so that the decisions made are more measurable and do not depend on the subjective interpretation of each judge.

From a philosophical perspective, SEMA Number 3 of 2023 aims to balance efforts to maintain the integrity of a household with respect to individual rights to live a better life. In Islamic law, marriage is considered a sacred bond; however, divorce is still allowed if domestic life is untenable. The six-month separation provision reflects an effort to prevent hasty divorce while giving couples space to reconsider their decisions. This rule also aligns with the principle of marriage in Indonesian law, which states that divorce is only allowed if the household can no longer sustain it.

Meanwhile, the exception for victims of domestic violence shows that the law is also oriented towards protecting individuals from injustice. Philosophically, this rule reflects substantive justice, which prioritizes the protection of victims over formal procedures alone. Thus, SEMA No. 3 of 2023 aims to create a balance between maintaining the household, preventing divorce without clear grounds, and protecting individuals from dangerous or untenable marital situations.

**Sitting of the Case and Trial Facts In Divorce Due To Broken Marriage:
Case Number: 119/Pdt.G/2024/PA.YK**

On February 20, 2024, the plaintiff's wife officially filed a divorce suit at the Yogyakarta Religious Court. In her lawsuit, Plaintiff stated that her household with the Defendant had experienced disharmony since 2018, characterized by ongoing arguments. At its peak, in November 2023, the defendant returned the plaintiff to his family home so that they were physically separated (Fitri et al., 2024). The Plaintiff believed that their relationship could no longer be maintained to form a *sakīnah, mawaddah, or rahmah* family (Nasution & Nasution, 2021).

On the other hand, the defendant filed an answer rejecting the arguments in Plaintiff's lawsuit and stated that he still wanted to maintain their household. During the trial, both parties submitted evidence in the form of documents and as witnesses. The plaintiff presented evidence in the form of photocopies of ID cards, marriage books, children's birth certificates, administrative documents for unpaid school payments, and screenshots of WhatsApp conversations between the defendant and another woman (Thahira & Handayani, 2023). In addition, Plaintiff also presented two witnesses who testified that they knew both parties, that Plaintiff and Defendant's households had not been harmonious since 2018, and that Plaintiff had been separated from Defendant since November 2023. The witnesses also stated that mediation efforts by the

family had been unsuccessful, and there were no indications of domestic violence during their marriage.

Meanwhile, the Defendant also submitted written evidence and presented two witnesses who essentially admitted that the household between the Plaintiff and Defendant had been disharmonious since 2018. However, according to Defendant's witnesses, the disharmony was more due to the alleged infidelity that the plaintiff often accused the Defendant of. They also confirmed that the couple had separated in November 2023.

In conclusion, the plaintiff remains firm in his lawsuit and asks the panel of judges to grant his request. On the other hand, the Defendant rejects all of the lawsuits' arguments, except those explicitly acknowledged. The defendant also stated that the lawsuit filed by the plaintiff was premature because it did not meet the minimum requirement of six months of separation from home as stipulated in SEMA Number 1 of 2022. Although the Defendant did not want a divorce, if the final decision still led to the termination of the marriage bond, he asked that he still be given the right to meet their child.

Judge's Considerations and Decision on Case Number

119/Pdt.G/2024/PA.YK

Legal Considerations Used by the Judge

Considering that the Plaintiff's lawsuit is based on the reasons stated in

Article 19 letter (f) of Government Regulation Number 9 of 1975, namely that between the Plaintiff and the Defendant, there are continuous disputes and quarrels, and there is no hope of living in harmony again. Considering that there is no objection from the Defendant because the *case* concerns the law of persons (Recht Person), the plaintiff is still burdened with proof (Sparrow, 2025).

The witnesses presented by the plaintiff fulfilled the formal requirements of Article 171 of the HIR. In this case, the decision of the panel of judges confirms that the ongoing quarrel between the Plaintiff and Defendant, which has been ongoing since 2018, can be proven through witness statements that fulfill the material requirements as regulated in Articles 171 and 172 HIR. The witnesses presented by the plaintiff provided testimony following each other so that it had valid evidentiary power in the eyes of the law.

Based on the evidence and witness statements, the judges concluded that the household relationship between the Plaintiff and Defendant could no longer be maintained (Yuniar & Sudarmaji, 2023). The dispute between the two was mainly caused by Defendant's alleged affair with Plaintiff's nephew. This conflict caused them to live apart for approximately five months. Peace efforts were also unsuccessful, further confirming that their households no longer hoped to return to harmony.

Based on SEMA Number 1 of 2022, couples who want to file for divorce on the grounds of quarrels must have been separated for at least six months. The panel of judges considered that, in this case, the dispute that occurred was very sharp and difficult to reconcile. In addition, evidence in the form of screenshots of WhatsApp conversations between the Defendant and another woman further strengthened the suspicion of an affair, which was the main trigger for the split in their household. The panel of judges also noted the conclusion of the Defendant, stating that if a divorce still had to happen, he asked for his rights as a father to meet his child. Therefore, the panel of judges ordered the plaintiff to provide access to the defendant so that he could continue interacting with their child.

In its final consideration, the panel of judges stated that maintaining marriage in such a condition would only harm both parties. A household that is already disharmonious and full of conflict can cause prolonged suffering; therefore, divorce is considered the best solution. This decision also refers to Article 39, paragraph 2 of Law Number 1 of 1974, Article 19 letter (f) of Government Regulation Number 9 of 1975, and Article 116 letter (f) of the Compilation of Islamic Law (KHI), which legally justifies divorce in such a situation.

Decision Analysis

This decision shows flexibility in applying the law, where the panel of judges is not rigidly bound by the provisions of SEMA Number 1 of 2022 concerning the minimum requirement of six months of separation before divorce can be granted. The judge considered substantial aspects of the household problems faced by both parties, including long-standing disputes, failed peace efforts, and evidence of infidelity, as the main triggers for the split (Syuib & Filzah, 2019).

This approach shows that judges apply the law textually and examine the factual conditions and social impacts arising from a decision. By considering evidence of infidelity as a factor that exacerbates conflict, judges ensure that substantive justice remains a priority in enforcing family law. In addition, this decision emphasizes the importance of children's rights after divorce (Zuhdi et al., 2023). Although the panel of judges granted the divorce suit, they still accommodated the defendant's right to meet his child, which is part of the principle of the child's best interests. This aligns with the principle of child protection in Islamic and positive law in Indonesia (Azwir et al., 2022). However, from the perspective of compliance with SEMA Number 1 of 2022, this decision could be a precedent for similar cases in which judges can be more flexible in applying the rules regarding the minimum requirement of six months of separation from home. This shows that the rule is not absolute but can still be

adjusted based on the concrete conditions of a case (Susylawati, 2020). Overall, this decision balances the normative application of the law with a substantive justice-based approach. The decision to grant divorce despite less than six months of separation and to consider the rights of the child is a progressive step in family law in Indonesia.

Judge's decision

After considering all the evidence, witness statements, and legal facts revealed at the trial, the judges finally gave a verdict on Monday, May 27, 2024. In the verdict, the panel of judges granted the lawsuit filed by the plaintiff, stating that the household between the Plaintiff and Defendant could no longer be maintained due to prolonged disputes and evidence of infidelity, which further exacerbated the conflict between the two (Fitriyani et al., 2023).

As a consequence of the verdict, the panel of judges determined the divorce by issuing one *bā'in sughrā* divorce from the Defendant to the Plaintiff. This means that divorce has officially occurred, and the plaintiff cannot return to the defendant, except with a new marriage contract and dowry (hayati & ali, 2022). In addition, in its verdict, the panel of judges also determined that the plaintiff bears all court costs in this trial process as the party filing the lawsuit. Thus, the decision of the panel of judges handed down considers formal legal aspects and reflects the factual

conditions in the parties' household. This decision is expected to provide legal certainty to both parties and end long-standing conflicts.

Implementation of SEMA Number 1 of 2022 at the Yogyakarta Religious Court in case 119/Pdt.G/2024/PA.YK

In this divorce case, although SEMA Number 1 of 2022 requires a six-month separation before the divorce is granted, the panel of judges still granted the lawsuit, even though the duration of the separation had only reached five months. This decision was based on strong legal facts, including continuous quarrels since 2018 and evidence of infidelity that caused household disharmony. The flexibility in applying this rule aligns with the principle of substantive justice found in various studies. Studies show judges often prioritize actual conditions over administrative provisions (Alfiander, 2022). This case reflects an approach that prioritizes welfare, in which maintaining a harmonious marriage can cause more significant harm.

This decision implies a more flexible interpretation of SEMA Number 1 of 2022, so that judges can assess cases based on factual circumstances, not just time limits (Shesa et al., 2024). This also sets a precedent for other courts in handling divorce cases by considering the aspects of justice and the welfare of both parties. Several studies conducted regarding the implementation of SEMA Number 1 in 2022 show that the

application of the six-month separation rule still often experiences flexibility in legal practice, depending on the specific conditions of the case.

1. Research by Hanfi Ilba and Ibn Radwan Siddik Turnip (2024)
 - a. This study analyzes the Supreme Court's decision Number 421 K/Ag/2023, which annulled a divorce because the requirement for a six-month separation of residence had not been met.
 - b. This study shows that, in some cases, the Supreme Court is stringent in implementing this rule to prevent divorces filed only as threats or bluffs.
 - c. However, in some other cases, judges can consider the emotional and social conditions of the couple to avoid prolonging conflicts that cannot be repaired.
2. Study by Amran Suadi in the Journal of Religious Court Law
 - a. Amran Suadi emphasized that SEMA Number 1 of 2022 aims to ensure that the court is not only a place for legitimizing divorce but also functions as an institution that upholds the values of family resilience.
 - b. In practice, many religious courts still grant lawsuits, even though the duration of separation has not reached six months if the conflict has reached a point that cannot be repaired.

Overall, this case shows that the law must not only be applied rigidly, but must also be able to provide the best solution for the parties involved in domestic disputes.

Judges' Considerations in Divorce Decisions: Maqasid Ash-Shari'ah Analysis and Judge Discretion

Theory

In divorce case: No. 119/Pdt. G/2024/PA.YK, the judge used discretion to ignore the minimum six-month separation requirement stipulated in SEMA No. 1 of 2022. This decision was taken by considering the principles of *maqāṣid al-sharī'ah*, especially the aspects of *hifz ad-dīn* (maintaining religion), *hifz an-nafs* (maintaining the soul), *hifz al-'aql* (maintaining reason), and *hifz an-nasl* (maintaining offspring) (Mansyur, 2020).

Judicial Discretion in the Islamic Legal System and Modern Justice

Judicial discretion is a recognized principle in modern judicial systems, especially in family law. A study by Shahar (2008) in the Journal of Islamic Law & Society highlights that judges in Islamic courts have the authority of *ijtihād* to ensure substantive justice, especially in cases related to the family's welfare. Another study by Perry and Rainey (2007) in the International Journal of Law, Policy, and Family shows that discretion is needed in family law to adapt the rules to the complexity of the social and psychological relationships of the individuals concerned (Syuib & Filzah, 2019).

In the context of Islamic law, Kamali (2014), in his book Principles of Islamic Jurisprudence, explains that *maqāṣid al-sharī'ah* provides a basis for judges to not only look at the formal aspects of the

law, but also consider the social and psychological consequences of the decisions taken (Ali, 2021). In this case, the judge prioritizes the public interest by avoiding significant harm.

Maqāṣid al-Sharī'ah Approach in Judge's Decisions

The judge's decision to grant the divorce suit, even though the separation has only lasted five months, can be analyzed from the perspective of *maqāṣid al-sharī'ah*:

- a. *Hifz al-dīn* (maintaining religion): A household full of quarrels contradicts the principle of harmony in Islam. If forced to survive, the Islamic values of household peace are neglected.
- b. *Hifz al-nafs* (maintaining the soul): A study by Amato in the Journal of Marriage and Family shows that conflict-filled marriages contribute to mental health disorders, such as anxiety and depression. In this case, divorce could be a solution to reduce the psychological health of both parties.
- c. *Hifz al-'aql* (maintaining reason): If a couple is forced to survive in a disharmonious household, this can trigger severe stress, which in the long term can result in mental disorders.
- d. *Hifz an-nasl* (maintaining offspring): A study by Hetherington & Stanley-Hagan (1999) in the Annual Review of Psychology shows that children who grow up in an environment full of household conflict tend to experience emotional and social disorders. Therefore, divorce in this context

can be considered an effort to protect children's psychological development (Aditya & Waddington, 2021).

Judicial Discretion in Divorce Cases

Although there are many arguments in favor of using discretion in this case, there is also criticism of the application of discretion, which is considered too flexible:

- a. Inconsistency in the Application of the Law: A study by Roberts in the Harvard Law Review highlights that overly broad discretion can lead to inconsistencies in the judicial system, making it difficult for the public to predict the outcomes of similar cases. If judges can ignore the minimum six-month separation requirement, a precedent can be created that allows divorce decisions to be made more easily, without considering formal requirements.
- b. Conflict with the Principle of Legal Certainty: The legal system must guarantee legal certainty for the community. If provisions such as SEMA Number 1 of 2022 can be ignored, the rule of law will be less effective and may cause injustice for parties who want to maintain their households.
- c. Is the benefit subjective? Some academics, such as Vogel in *Islamic Law and Society*, argue that the benefits of Islamic law are subjective and contextual, making it difficult to establish clear boundaries when legal rules are ignored (Vogel, 2000)..

CONCLUSION

The divorce decision for case number 119/Pdt. G/2024/PA.YK shows that judges are crucial to balancing legal and substantive justice. Although the formal rules in SEMA Number 1 of 2022 require couples to live apart for at least six months before a divorce is granted, the judge used discretion by prioritizing the fact of ongoing disputes that have been going on since 2018. From the perspective of *maqāṣid al-sharī'ah*, this decision can be justified because it considers the interests in the following aspects: *Hifz ad-dīn* (preserving religion): avoiding a household whole of conflict that is contrary to the principle of harmony in Islam. *Hifz an-nafs* (preserving the soul): Saving couples from emotional and psychological suffering due to prolonged conflict. *Hifz al-'aql* (preserving reason): Avoiding the negative impacts of stress and depression due to disharmonious household relationships. *Hifz an-nasl* (preserving offspring): Protecting children from the psychological impacts of a conflicted family environment. Although this decision can be considered a progressive step in Islamic law and modern justice, there is an academic debate about the potential for legal inconsistency and uncertainty resulting from overly broad discretion. Therefore, a balance is needed between legal flexibility in adjusting to social realities, while maintaining stability and legal certainty in the Islamic justice system.

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