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Implementation of Supreme Court Circular Letter Number 3 of 2023 on the Six-Month Separation Requirement in Divorce Cases from the Perspective of Islamic Family Law

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ABSTRACT

Supreme Court Circular Letter (SEMA) Number 3 of 2023 requires spouses to have lived apart for at least six months in divorce cases caused by continuous disputes and quarrels, unless legal facts of domestic violence (KDRT) are found. This study analyzes the effectiveness of this requirement and its compatibility with Islamic Family Law. Using a qualitative normative juridical method, it reviews regulations, the SEMA, books, fiqh texts, and journals through the concepts of *iṣlāḥ*, *ḍarar*, and *maqāṣid al-syarī'ah*. The results show that the six-month requirement gives spouses time to reconsider divorce and to seek reconciliation, and that it provides clearer guidance for examining cases. However, effectiveness should be assessed not only by a decrease in divorces but also by legal certainty and the protection of the parties' interests. From the perspective of Islamic Family Law, the provision is beneficial if it prevents hasty divorce and allows *iṣlāḥ*; its application, however, must take into account the actual conditions of the parties, especially KDRT or other harm. It should therefore be applied proportionally, balancing marriage preservation, legal certainty, harm prevention, and the protection of the rights of the husband, the wife, and the children.

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1. INTRODUCTION

Marriage is an important institution that not only unites a man and a woman but also involves social, legal, and religious aspects [1]. In national law, commonly known as positive law, the purpose of marriage is to build a happy and lasting family on the basis of belief in God [2]. In Islamic Family Law, meanwhile, marriage is regarded as a very strong bond (*mitsaqan ghalizhan*) that is expected to produce a household full of tranquility, love, and mercy [3]. Divorce should therefore be the last option, resorted to only when the

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purpose of marriage can no longer be achieved. In reality, however, continuous domestic conflict means that divorce remains a social and legal problem that continues to develop.

Data from Statistics Indonesia (BPS) show that divorce rates in Indonesia are quite high. In 2020, 291,677 divorce cases were recorded; this figure rose significantly to 447,743 cases in 2021 and reached 516,344 cases in 2022. In 2023, the number fell to 408,347 cases, according to a BPS table sourced from data of the Directorate General of Religious Courts of the Supreme Court [4]. Although the number decreased in 2023 compared with the previous year, it still shows that divorce is a significant phenomenon in family life in Indonesia. Moreover, data on the reasons for divorce show that continuous disputes and quarrels are among the most dominant causes, accounting for around 251,828 cases, or 61.67% of divorce cases in 2023.

This indicates that divorce cannot be separated from prolonged conflict within the household. Research published in the Jurnal Kependudukan Indonesia likewise shows that the increase in divorce cases, especially those initiated by the wife (*cerai gugat*), is related to various household problems, including the inability to meet the family's basic needs, which can in turn trigger disputes and conflict in the household [5]. Therefore, the high divorce rate reflects not only the large number of marriages that end but also the complexity of family problems, which the legal system must address appropriately, fairly, and contextually.

Given the importance of providing guidance to judges in handling divorce cases, the Supreme Court issued Supreme Court Circular Letter (SEMA) Number 3 of 2023 on the Enforcement of the Formulation of the Results of the 2023 Plenary Meeting of the Supreme Court Chambers as a Guideline for the Performance of Duties for Courts. The SEMA was issued on 29 December 2023 and remains in force. One of its formulations concerning divorce cases caused by continuous disputes and quarrels provides that a divorce may be granted if it is proven that continuous disputes and quarrels exist, that there is no hope of living in harmony again, and that the couple has lived apart for at least six months, unless facts of domestic violence (KDRT) are found [6].

The provision requiring the couple to live apart for at least six months is fundamentally intended to ensure that the breakdown of the household has reached a serious condition and that there is no hope of living in harmony again. It can also be understood as an effort to realize the principle of making divorce difficult and to give married couples the opportunity to reflect and, possibly, repair their relationship. Therefore, SEMA Number 3 of 2023 is intended not merely as an administrative obstacle for couples who wish to divorce, but as a guideline for judges in assessing whether the disputes that have occurred have truly caused a permanent breakdown of the household.

However, the six-month requirement of living apart creates its own implementation problems. These problems mainly concern how judges interpret and apply the requirement in concrete cases. Normatively, the SEMA provides guidance on the six-month requirement and the exception that applies when legal facts of KDRT are found. However, the formulation does not explain in detail the parameters for applying the separation requirement, the forms of legal facts that can be categorized as KDRT, or the limits of the circumstances that allow judges to set the requirement aside. This condition leaves room

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for differences in judges' assessments when they examine the facts and determine whether a case satisfies the provisions of the SEMA.

Implementing this SEMA matters because research on the application of SEMA Number 3 of 2023 reveals dynamics in judicial practice. Research on the position and application of SEMA Number 3 of 2023 in divorce cases in the Religious Court shows that the SEMA functions as a technical judicial guideline for judges and that its application is closely related to assessing the grounds for divorce and the facts revealed at trial [7]. In addition, the implementation of SEMA Number 3 of 2023 shows that judges still assess the grounds and evidence comprehensively, so applying the provision on living apart cannot be separated from the concrete conditions of each case [7]. This indicates that, although the SEMA aims to provide uniform guidance, its application may still produce differences in judicial consideration when judges are faced with different legal facts.

This lack of uniformity becomes problematic when considered in light of the principles of legal certainty and equality before the law. Parties in similar household circumstances should receive predictable, consistent legal treatment. If the six-month requirement is applied differently without clear parameters, justice seekers may be uncertain about when a divorce case can be granted. On the one hand, strict application of the requirement can support the goal of preserving marriage; on the other hand, an overly formalistic application has the potential to disregard the factual conditions and legal interests of parties whose household has already broken down.

These concerns can be examined further from the perspective of Islamic Family Law, in which divorce is not regarded as the goal of marriage but as a path that may be taken when household life can no longer be maintained properly [8]. The Qur'an provides guidance that, when a marriage faces problems, husband and wife must choose between maintaining the marriage in a proper manner and ending it in a good manner. This principle is affirmed in Q.S. Al-Baqarah verse 229 as follows:

الطَّلَاقُ مَرَّتَانِ ۖ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ ۗ وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ ۖ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ ۗ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا ۚ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ

"Divorce (that may be revoked) is twice. After that, one may take the wife back in a proper manner or release her in a good manner. It is not lawful for you to take back anything you have given to them, unless both fear that they will not be able to observe the limits of Allah. If you (the guardians) fear that the two will not be able to observe the limits of Allah, then there is no sin on either of them for what the wife gives to redeem herself. These are the limits of Allah, so do not transgress them. Whoever transgresses the limits of Allah, it is they who are the wrongdoers."

Verse 229 of the Qur'an shows that the continuation of a marriage must be based on the principle of *ma'ruf*, whereas, if the marriage can no longer be maintained, the divorce process must likewise be carried out in accordance with the principles of *ihsan* and justice.

This verse is relevant to the application of SEMA Number 3 of 2023, which requires spouses to live apart for at least six months in divorce cases based on continuous disputes and quarrels. The provision is essentially intended to allow married couples to

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reconsider the integrity of their household before a divorce is granted. However, the application of the requirement cannot be separated from the concrete conditions experienced by the parties. The principle of *imsāk bi ma'rūf* indicates that a marriage must be maintained in a proper manner and in a way that brings benefit, rather than merely preserving the marital bond in a formal sense. Conversely, the principle of *tasrīḥ bi iḥsān* indicates that if the marriage can no longer be sustained in a good condition, its resolution through divorce must be carried out fairly and must not cause injustice to either party.

This issue becomes more significant because Islamic law emphasizes not only the continuation of marriage but also benefit, justice, and harm prevention. This principle can be linked to the fiqh maxim *al-dharar yuzal*, which means that harm must be removed. If the continuation of a marital relationship actually causes greater harm to one of the parties, maintaining the marriage formally is not always in line with the objectives of the sharia. Recent research published in the USM Law Review further shows that the six-month separation requirement needs to be examined from the perspective of *maqashid syari'ah*, particularly concerning the protection of life (*hifz al-nafs*), intellect (*hifz al-'aql*), and lineage (*hifz al-nasl*), because an overly rigid application has the potential to prolong conflict in the household [9].

Accordingly, applying SEMA Number 3 of 2023 presents a multidimensional legal problem. The six-month requirement of living apart can be seen as an instrument to prevent divorce from becoming too easy and to allow couples to preserve their marriage. However, the provision can cause problems if applied mechanically without considering the parties' concrete circumstances, especially when household conflict has become serious. Moreover, BPS data show that continuous disputes and quarrels are a dominant factor in divorce cases, so the SEMA provision directly affects a large number of divorce cases.

It is therefore important to examine the implementation of Supreme Court Circular Letter Number 3 of 2023 on the six-month separation requirement in divorce cases from an Islamic Family Law perspective. Such research is needed not only to determine the extent to which the SEMA provision is applied in judicial practice, but also to analyze the uniformity of judges' considerations, the relationship between the separation requirement and both legal certainty and the protection of human rights, and the provision's compatibility with the principles of Islamic Family Law. Such a study is expected to provide a more comprehensive picture of whether applying the six-month separation requirement has achieved a balance among the goal of making divorce difficult, the protection of the parties' rights, and the principle of benefit in Islamic Family Law.

This research is therefore urgent for examining further the implementation of SEMA Number 3 of 2023 in divorce cases, particularly the application of the six-month requirement of living apart, the consistency of judges' considerations in applying it, and its compatibility with the principles of justice, the protection of human rights, and the objectives of Islamic Family Law. Based on the foregoing description, this research is titled "Implementation of Supreme Court Circular Letter Number 3 of 2023 on the Six-Month Separation Requirement in Divorce Cases from the Perspective of Islamic Family Law."

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2. METHOD

This research uses a normative legal method with a library research approach, that is, analyzing relevant legal sources to obtain secondary information [10]. This method was chosen because the research focuses on analyzing legal norms, especially those related to the application of SEMA Number 3 of 2023 on the requirement of separation of at least six months under Islamic family law. The approaches used include the statutory approach and the conceptual approach, aimed at assessing the compatibility of the SEMA provisions with the principles of marriage law and judicial practice.

The legal materials used in this research consist of primary and secondary materials. The primary legal materials relate to marriage and divorce, namely Marriage Law Number 1 of 1974, the Compilation of Islamic Law, and SEMA Number 3 of 2023. The secondary legal materials include academic literature, such as books, journals, and previous studies that discuss divorce and judicial policy, as well as other sources that support an understanding of the concepts applied in this research [11].

Data were collected through a documentation study that involved identifying, inventorying, and analyzing relevant sources. The data obtained were then analyzed using a qualitative approach by detailing, interpreting, and linking legal norms from the perspective of Islamic family law [12].

3. RESULTS AND DISCUSSION

3.1. Implementation of SEMA Number 3 of 2023 in Divorce Cases

3.1.1. Position and Substance of SEMA Number 3 of 2023

Supreme Court Circular Letter (SEMA) Number 3 of 2023 is a guideline issued by the Supreme Court to assist courts in carrying out their duties and deciding cases [13]. It contains the formulated results of the 2023 Plenary Meeting of the Supreme Court Chambers, which judges must follow as a guideline when handling cases. SEMA Number 3 of 2023 was issued on 29 December 2023 and remains in force. One provision relating to family law concerns divorce cases caused by continuous disputes and quarrels.

A divorce on the grounds of continuous disputes and quarrels may be granted if the judge finds evidence that the relationship between the husband and wife has indeed been marked by prolonged conflict and that there is no longer any hope of their living in harmony again. In addition, the parties must, in principle, have lived apart for at least six months. This provision shows that the judge must consider not only the existence of quarrels between the spouses but also whether the conflict has caused a serious breakdown of the marital relationship. Under this requirement, divorce is not expected to be granted merely because of disputes that are still temporary or can still be resolved through reconciliation.

The provision on living apart for six months, however, does not apply absolutely [13]. SEMA Number 3 of 2023 provides an exception if legal facts of domestic violence (KDRT) are found in the examination of the case. This means that if domestic violence can be proven at trial, the judge may consider the divorce case without waiting for the six months of living apart to be fulfilled. This exception shows that applying the SEMA must still take into account the real conditions experienced by the husband or wife. The goal of

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maintaining a marriage must not result in one party remaining in a situation that endangers or harms them.

3.1.2. Rationality of the Six-Month Requirement of Living Apart

The provision on living apart for six months can essentially be understood as an effort by the Supreme Court to ensure that a divorce is granted only because the household has truly experienced a serious breakdown [13]. The six-month period gives judges a clearer limit for assessing the condition of the parties' household. If the husband and wife have lived apart for a sufficiently long time, this may indicate that their household relationship is deteriorating and that the possibility of living together again is diminishing [13]. However, living apart cannot be the only measure, because judges must still consider the other facts revealed during the trial.

This requirement is also related to the principle of making divorce difficult in Indonesian marriage law. This principle does not prohibit ending a marriage that can no longer be maintained; rather, it aims to ensure divorce is not pursued hastily. Before a divorce is granted, it must be established that sufficient grounds exist and that efforts to maintain the household are no longer possible. In this context, SEMA Number 3 of 2023 provides judges with additional guidance to assess more carefully whether the breakdown of the household has reached a condition that warrants divorce.

Research by Virdianaa Agustin and colleagues on the application of SEMA Number 3 of 2023 at the Religious Court of Malang City shows that the provision on six months of living apart aims to tighten and standardize the application of the law in divorce cases [14]. The requirement also relates to efforts to reduce divorces resulting from household conflicts that could still be resolved. Thus, the provision on living apart can be understood as an instrument that gives married couples time to reconsider the continuation of their household and provides an opportunity for reconciliation before a divorce is decided.

The implementation of SEMA Number 3 of 2023 essentially has two sides. On the one hand, the six-month requirement to live apart strengthens judicial caution and helps prevent hasty divorces. On the other hand, the exception for cases involving KDRT shows that the application of this provision must still take into account the protection of parties who experience violence or harm. Therefore, the success of the SEMA's application can be judged not only by how strictly judges apply the six-month requirement, but also by their ability to balance the interest in maintaining the marriage against protecting the parties' rights and safety.

3.2. SEMA Number 3 of 2023 from the Perspective of Islamic Family Law

Islamic family law holds that disputes between husband and wife should not be resolved immediately by divorce. Islam first encourages efforts to repair the relationship and reconcile both parties [15]. This shows that preserving the integrity of the household is an important matter in married life. Such efforts at reconciliation are known as *iṣlāḥ*, namely the effort to repair a relationship affected by disputes so that it can function well again [16].

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The principle of *iṣlāḥ* can be found, among other places, in Q.S. An-Nisa': 35, which reads as follows:

وَاِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوْا حَكَمًا مِّنْ اَهْلِهٖ وَحَكَمًا مِّنْ اَهْلِهَا ۚ اِنْ يُّرِيْدَآ اِصْلٰحًا يُّوَفِّقِ اللّٰهُ بَيْنَهُمَا ۗاِنَّ اللّٰهَ كَانَ عَلِيْمًا خَبِيْرًا ﴿٣٥﴾

"If you (the guardians) fear a dispute between the two, appoint an arbiter from the husband's family and an arbiter from the wife's family. If both intend to make peace (islah), Allah will grant success to them. Indeed, Allah is All-Knowing, All-Aware."

Surah An-Nisa verse 35 above explains that, when a dispute arises between husband and wife, a *ḥakam* (arbiter) from the husband's family and one from the wife's family may be appointed. This provision indicates that the resolution of household conflict should first be directed toward reconciliation. With a third party to help resolve the problem, it is hoped that the couple can find a way out without ending the marriage.

When considered in relation to SEMA Number 3 of 2023, the requirement of living apart for six months can be understood as a means of giving husband and wife time to reconsider their decision to divorce. This period allows each party to calm down, evaluate the household problems, and consider the possibility of rebuilding a good relationship. The six-month provision is thus related to the principle of *iṣlāḥ*: a divorce is not granted immediately merely because of a dispute, but it must first be examined whether the household can still be maintained.

However, the principle of *iṣlāḥ* does not mean that a marriage must be maintained in every circumstance. Islam also provides a way out when household disputes can no longer be resolved and instead cause suffering or harm to one of the parties. In such a situation, maintaining the marriage indefinitely is not always in line with the purpose of marriage in Islam. Therefore, divorce can become a solution when household life can no longer provide tranquility, and there is no longer any possibility of living together well [17].

In this research, the principle of *iṣlāḥ* can be used to assess whether applying SEMA Number 3 of 2023 truly gives couples sufficient opportunity to repair their household relationship. At the same time, the principle needs to be balanced against the real conditions experienced by the parties. If efforts at reconciliation cause one party to continue to suffer or to remain in danger, the interest of protecting that party needs to be considered in the application of the law.

In addition to the principle of *iṣlāḥ*, an important concept for analyzing SEMA Number 3 of 2023 is *ḍarar*. Simply put, *ḍarar* means danger, loss, or harm experienced by a person as a result of an act or a situation [18]. Within Islamic Family Law, *ḍarar* holds an important position because the marital relationship should fundamentally provide tranquility, protection, and benefit for the husband, wife, and children. Therefore, a marriage should not become the cause of continuous suffering for either party. This concept is reinforced by the fiqh maxim:

الضرر يزال

"Harm must be removed."

This maxim implies that every situation that causes harm must be removed or reduced [19]. In the context of household life, the principle can be used to assess situations

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that harm one party, such as violence, neglect of financial support, mistreatment, and ongoing disputes that cause suffering.

The concept of *ḍarar* becomes particularly important when the six-month requirement of living apart is applied in divorce cases. Where the household can still be repaired, allowing time before divorce can help because it gives the couple time to reconcile. However, if one of the parties actually experiences serious harm during that period, the rigid application of the requirement needs to be reconsidered in light of the facts established at trial.

This consideration is also related to the KDRT exception in SEMA Number 3 of 2023. The SEMA provides an exception to the six-month requirement of living apart if legal facts of domestic violence are found. This provision shows that the application of the six-month requirement cannot be separated from the protection of the party who experiences violence. In such a situation, the victim's safety and protection become important matters the judge must consider.

From the perspective of Islamic Family Law, this exception can be linked to the principle of removing *ḍarar*. This means that the goal of maintaining a marriage must not be pursued by ignoring the harm experienced by the husband, wife, or children. If living together actually causes serious danger, the dissolution of the marriage can be considered a means of removing that harm.

Thus, the principle of *iṣlāḥ* and the concept of *ḍarar* can be used together to analyze the implementation of SEMA Number 3 of 2023. The principle of *iṣlāḥ* provides the basis for the view that household conflict should first be addressed through efforts at resolution, while the concept of *ḍarar* sets the limit that efforts to maintain the marriage must not result in one party continuing to experience loss or suffering. Both show that applying the six-month requirement of living apart must take into account the household's concrete condition, the possibility of reconciliation, and the presence or absence of harm experienced by the parties.

Based on the above description, this research addresses the question of whether the application of SEMA Number 3 of 2023 has achieved a balance between maintaining the integrity of the marriage and protecting the party who experiences harm, from the perspective of Islamic Family Law. The six-month requirement to live apart can be seen as an effort to prevent hasty divorce and provide an opportunity for *iṣlāḥ*. However, where there is serious *ḍarar*, applying the provision must take into account the exceptions set out in the SEMA. Therefore, this research does not merely assess whether judges have applied the six-month provision; it also analyzes how judges balance the principle of reconciliation (*iṣlāḥ*), the prevention of harm (*ḍarar*), and the protection of the family in deciding divorce cases.

3.3. Analysis Based on Maqāṣid Al-Syarī'Ah

The provision of SEMA Number 3 of 2023 on the six-month requirement of living apart is analyzed here through the concept of *maqāṣid al-syarī'ah*, namely the objectives that Islamic sharia seeks to realize in order to provide benefit and prevent loss or harm to humans [20]. In divorce cases, the application of the six-month requirement should be

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assessed not only in terms of the legal rule itself, but also in terms of its impact on the husband, wife, and children. This approach makes it possible to determine whether applying the SEMA benefits family life or, instead, creates new problems for parties facing a household breakdown.

3.3.1. Hifẓ al-Nasl (Protection of Lineage)

One important objective of *maqāṣid al-syarī'ah* is *hifẓ al-nasl*, namely the preservation and protection of lineage. In Islam, marriage is not only a relationship between a man and a woman, but also the foundation for forming a family and the setting in which children's education and development take place [21]. Therefore, maintaining the integrity of the family, as long as this remains possible, is one of the matters that must be considered in resolving household conflict.

The provision of SEMA Number 3 of 2023 on living apart for six months can allow married couples to reconsider their decision to divorce. This time can be used to evaluate household problems and to seek reconciliation. If, during that period, the husband and wife still wish to repair their relationship, the opportunity to maintain the marriage remains open. Thus, the six-month requirement can be linked to efforts to preserve family continuity and protect the interests of children.

However, *hifẓ al-nasl* does not mean that a marriage must be maintained under all circumstances. The family integrity that is preserved must still provide a healthy environment for family members' development. If household life is instead marked by violence, severe conflict, or circumstances that may harm children, the interest of protecting the family must also be considered from that perspective.

3.3.2. Hifẓ al-Nafs (Protection of Life)

In addition to the protection of lineage, *maqāṣid al-syarī'ah* also regards *hifẓ al-nafs*, or the protection of life, as one of its main objectives. In household life, this principle means that every family member has the right to feel safe and to be free from acts that endanger their safety [22].

This principle becomes particularly important when a divorce case involves domestic violence (KDRT). If a husband or wife has experienced violence and this has been proven at trial, maintaining the marriage merely because the six months of living apart has not yet been completed can create a problem for the protection of life. In such a situation, the application of the rule should not focus solely on fulfilling the formal requirement but should also take into account the safety and condition of the party who has experienced violence.

This is consistent with SEMA Number 3 of 2023, which provides an exception to the six-month requirement of living apart when legal facts of KDRT are found. This exception shows that the six-month requirement is not absolute in every circumstance. The provision can be understood as an expression of concern for the protection of the party who experiences violence, so that the goal of maintaining the marriage does not force a person to remain in a condition that endangers them.

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Thus, from the perspective of *hifẓ al-nafs*, the SEMA needs to be applied carefully. Judges must not only determine whether the six-month requirement has been fulfilled but also consider whether conditions could endanger the safety or life of one of the parties.

3.3.3. Hifẓ al-Māl (Protection of Property)

Another objective relevant to this research is *hifẓ al-māl*, namely preserving and protecting a person's property or economic rights. In Islamic family law, the husband must provide financial support to his wife and children according to his ability [23]. Therefore, economic matters and fulfilling financial support constitute an important part of household life.

Conflict between husband and wife sometimes takes the form not only of quarrels but also of economic problems, such as the failure to provide financial support or the neglect of the family's needs. This condition requires attention because it can cause loss to the party who is entitled to receive financial support.

Where a case involves neglect of financial support that leaves one party unable to meet basic living needs, the six-month living-apart requirement warrants closer analysis. Judges must determine whether granting this period still benefits the repair of the household or instead forces the aggrieved party to continue bearing economic hardship.

Accordingly, applying the SEMA must also take into account the protection of the parties' economic rights. This is important so efforts to preserve the marriage do not result in the neglect of any family member's basic rights.

3.3.4. Jalb al-Maṣlaḥah Wa Dar' al-Mafsadah

Another principle that can be used to analyze SEMA Number 3 of 2023 is *jalb al-maṣlaḥah wa dar' al-mafsadah*, namely the effort to obtain benefit and prevent harm. This principle allows assessment of the balance between the benefits and the negative impacts of applying the six-month requirement of living apart [24].

Applying this requirement can provide several benefits. *First*, the six-month requirement can prevent couples from making a hasty decision to divorce. *Second*, this period allows the husband and wife to reconcile and reconsider their decision. *Third*, the requirement can help judges obtain a clearer picture of the condition of the parties' household. *Fourth*, a common guideline can help create uniformity in examining divorce cases.

However, applying the requirement can also cause harm if it is done without considering the parties' concrete circumstances. For example, the six-month period can prolong household conflict that can no longer be repaired. In addition, an overly formalistic application can create difficulties for parties in vulnerable conditions, especially where there is violence, neglect of financial support, or other forms of harm. In certain circumstances, delaying the resolution of a marriage can actually prolong the suffering of the party experiencing the problem.

Therefore, the application of SEMA Number 3 of 2023 needs to balance the benefit of maintaining the marriage against the benefit of protecting the party who experiences harm. The six-month requirement can be beneficial if the household still has a chance of

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being repaired. Conversely, if the marriage has caused danger or loss, the court must apply the exceptions and the actual conditions proven at trial.

Based on the above description, the application of SEMA Number 3 of 2023 can be analyzed through *maqāṣid al-syarī'ah*. With respect to *hifẓ al-nasl*, the six-month requirement can provide an opportunity to preserve the family and protect the interests of children. With respect to *hifẓ al-nafs*, the rule must be applied with attention to the safety of the party who experiences KDRT. Meanwhile, with respect to *hifẓ al-māl*, judges need to consider economic rights and the obligation of financial support within the household [25].

The principle of *jalb al-maṣlaḥah wa dar' al-mafsadah* likewise indicates that assessing the application of the SEMA solely on whether the six-month requirement has been fulfilled is insufficient. The central consideration is the impact of applying the provision on the benefit and harm experienced by the parties. Thus, the *maqāṣid al-syarī'ah* perspective provides an analytical basis for concluding that SEMA Number 3 of 2023 should be applied proportionally, while continuing to pursue the goal of maintaining the family and, at the same time, protecting the husband, wife, and children from harm.

The compatibility of SEMA Number 3 of 2023 with the principles of Islamic Family Law is not determined merely by whether the six-month requirement of living apart is fulfilled; it must also be assessed in light of the requirement's objectives and its impact on family life. According to the researchers, the six-month provision can be justified as long as it allows the husband and wife to carry out *iṣlāḥ*, or repair their relationship, and prevents divorce from being carried out hastily. However, it should not be applied rigidly where *ḍarar*, or serious harm, already exists in the household. Therefore, the protection of life (*hifẓ al-nafs*), lineage (*hifẓ al-nasl*), and economic rights (*hifẓ al-māl*) must form part of the judge's considerations. The researchers hold that applying SEMA Number 3 of 2023 aligns with Islamic Family Law if it balances efforts to maintain a marriage that can still be repaired with protecting the party who experiences harm. In this way, the six-month provision is understood not only as a formal requirement but also as an instrument for realizing benefit and preventing *mafsadat* in family life.

4. CONCLUSION

The implementation of SEMA Number 3 of 2023, which requires living apart for six months, represents an effort by the Supreme Court to provide clearer guidance in handling divorce cases caused by continuous disputes and quarrels. The provision aims to ensure that divorce is not pursued hastily and that it genuinely reflects a serious breakdown of the household relationship, with no longer any hope of living in harmony. In addition, the SEMA provides an exception where the court establishes the legal facts of domestic violence (KDRT) at trial, so the parties' condition and safety can still be taken into account in resolving the divorce case.

The perspective of Islamic Family Law on applying SEMA Number 3 of 2023 can be examined through the concepts of *iṣlāḥ*, *ḍarar*, and *maqāṣid al-syarī'ah*. The six-month requirement to live apart can be beneficial if it allows the husband and wife to reconsider divorce and try to reconcile. However, its application must still be adjusted to the parties'

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actual circumstances, especially where there is violence or serious harm. Therefore, the effectiveness of the SEMA is not sufficiently assessed only by whether the divorce rate decreases. However, also assessed by the extent to which the provision can provide legal certainty, open opportunities for reconciliation, prevent harm, and protect the rights and interests of the husband, wife, and children.

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