

Legal Protection of Victims of Domestic Violence in Divorce: *Sadd al-Zari'ah's* Analysis of Sema No. 3/2023

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Abstract: The application of Supreme Court Circular Letter (SEMA) No. 3 of 2023 provides an exception to the six-month separation requirement in divorce cases based on continuous disputes and quarrels when domestic violence is established. The exception raises questions concerning victim protection, evidentiary assessment, and judicial discretion. Therefore, this study aimed to examine the domestic violence exception from the perspective of *Sadd al-zari'ah* and analyse its application in Religious Courts. This study used a normative legal method with statutory, conceptual, and case approaches. Legal materials were analysed doctrinally using five parameters of *sadd al-zari'ah*, namely the existence of *al-Zari'ah*, the causal and probable relationship between the means and *mafsadah*, the nature and gravity of *mafsadah*, preventive necessity, and proportionality. The results showed that the six-month separation requirement may function as a *zari'ah* when its application in domestic violence cases risks prolonging or intensifying harm to victims. The exception under SEMA No. 3 of 2023 functions as a preventive mechanism to prevent greater *mafsadah*. The effectiveness depends on judicial assessment of legally relevant and admissible evidence. Judicial discretion should not be understood as authority to disregard evidentiary rules, but as a contextual assessment within procedural law, particularly where psychological and other forms of domestic violence are difficult to establish through conventional evidence. In conclusion, immediate amendment of SEMA No. 3 of 2023 is not necessarily required. Rather, the application should be strengthened through gender-sensitive and victim-centred judicial practice, clearer evidentiary guidance, and appropriate use of expert and psychological evidence. Future studies should examine broader judicial decisions through socio-legal approaches.

Keywords: domestic violence; divorce; judicial discretion; SEMA No. 3 of 2023; *Sadd al-zari'ah*; victim protection.

1. Introduction

Divorce remains one of the most significant legal and social issues in Indonesia's family law system. Religious Courts adjudicate several divorce cases each year, reflecting the continuing complexity of marital disputes in contemporary Indonesian society.

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According to Statistics, based on judicial system data, the number of divorces increased from 399,921 cases in 2024 to 438,168 cases in 2025, representing a 9.56 percent increase. In 2025, 346,516 cases were filed as *cerai gugat*, and 91,652 were *cerai talak*, indicating the continued predominance of divorce proceedings initiated by women.¹ At the same time, the National Commission on Violence Against Women (Komnas Perempuan), through its 2025 Annual Report on Violence against Women (CATAHU 2025), recorded 376,529 cases of gender-based violence against women, an increase of 14.07 per cent compared to the previous year. A total of 337,961 cases (89.76 per cent) occurred in the personal sphere, confirming that households, marital relationships, and intimate relationships remain among the most vulnerable settings for violence against women.² These figures demonstrate the close intersection between marital dissolution and violence against women while also indicating the need for a family law framework that balances the preservation of marriage with effective protection for victims of domestic violence.²

The increasing number of divorce cases reflects the complexity of marital disputes and the continuing challenges faced by families in maintaining marital relationships.³ Previous studies have identified various factors contributing to marital breakdown, including weaknesses in premarital preparation, prolonged marital conflict, as well as broader social and economic pressures.⁴ The legal consequences of divorce also extend beyond the termination of the marital relationship, particularly in relation to women's economic rights, children's welfare, and the fulfilment of post-divorce obligations. Accordingly, divorce should not be understood solely as the dissolution of marriage but also as a legal process that protects the rights and interests of vulnerable family members. One of the significant factors associated with marital breakdown is domestic violence, which comprises physical, psychological, sexual, and economic forms of violence and may occur within unequal power relations between spouses.⁵ Gender inequality, patriarchal social structures, economic dependency, and inadequate legal protection

¹ Yasniwati Andalusia, "The Concept of Pre-Marital Marriage Guidance to Reduce the High Rate of Divorce Due to Reunion in West Sumatra," *Nagari Law Review* 7, no. 3 (2024): 626–38, <https://doi.org/https://doi.org/10.25077/nalrev.v7.i.3.p.626-638.2024>.

² Titin Triana, Suhar Suhar, and Ishaq Ishaq, "Providing Nafkah Mu'tah for Wives in Lawsuits of Divorce According to Islamic Law and Indonesian Legislation," *Journal of Comprehensive Islamic Studies*, 2023, <https://doi.org/10.56436/jocis.v2i1.197>.

³ Yeby Ma'asan Mayrudin Trinita Meiliana, "Dynamics of gender justice in the state's negation of victims of sexual violence," *Gender Equality: International Journal of Child and Gender Studies* 10, no. 2 (2024), <https://doi.org/http://dx.doi.org/10.22373/equality.v10i2.24218>.

⁴ Syamsiah, "Legal Sanctions for Perpetrators of Domestic Violence," *Al-baths: Journal of Social, Political and Legal Sciences* 2, no. 1 (2024), <https://doi.org/https://doi.org/10.32520/albahts.v2i1.3119>.

⁵ Reza Agustin, "Application of the Law on the Protection of Women in Cases of Domestic Violence," in *Social Sciences and Humanities* (Purwokerto: UMP Press, 2024), <https://doi.org/https://doi.org/10.30595/pssh.v17i.1126>.

may further aggravate the vulnerability of victims.⁶ Furthermore, comparative studies demonstrate that domestic violence remains a significant legal concern requiring effective legal responses and victim-oriented protection mechanisms. The consequences of domestic violence may extend to children and other members of the household, thereby creating broader social and familial impacts.⁷ The legal response to domestic violence requires both criminal sanctions against perpetrators and mechanisms capable of protecting victims from continuing harm.

Indonesia has established a legal framework for addressing domestic violence through Law No. 23 of 2004 on the Elimination of Domestic Violence. The law recognises these events as unlawful conduct and provides a basis for victim protection and legal intervention.⁸ However, a statutory framework does not automatically eliminate barriers to justice. Victims may experience difficulties in reporting violence, accessing legal assistance, and presenting evidence, particularly when the event occurs within the private sphere of the household.⁹ Psychological and economic violence, in particular, may not produce visible physical evidence, while victims may be reluctant to report the perpetrator because of economic dependency, social stigma, fear, or unequal power relations.¹⁰ These conditions may lead to secondary victimisation and complicate the judicial process.

Protecting victims requires coordination between criminal and family law. Within the family law system, Religious Courts have an important role in adjudicating divorce cases involving domestic violence and in determining the legal consequences of divorce, including matters relating to women's and children's rights.¹¹ The Compilation of Islamic Law and Indonesian marriage legislation provide legal foundations for divorce and the protection of family members, while judicial institutions are expected to ensure

⁶ Zul Khaidir Kadir, "Breaking the Cycle of Family Death: An Analysis of Japanese Criminal Policy towards Familicide in Urban Society," *Consensus: Journal of Defense, Law and Communication Sciences* 2, no. 1 (2025): 88-109, <https://doi.org/https://doi.org/10.62383/konsensus.v2i1.603>.

⁷ Mirna Nur Alia Abdullah Salsabila Afida Putri, "An Exploration of Factors Affecting a Couple's Decision to Divorce and Its Impact on Children," *Journal of Sociology, Anthropology, and Culture of the Archipelago* 3, no. 3 (2024), <https://doi.org/https://doi.org/10.55123/sabana.v3i3.3356>.

⁸ Mohamad Ismed Nurhayu Handayani Putri, Moh. Djafar Shodiq, "Legal Protection of Female Victims of Domestic Violence," *Ulil Albab: Multidisciplinary Scientific Journal* 3, no. 12 (2024): 12-29, <https://doi.org/10.36418/syntax-literate.v8i11.13925>.

⁹ President of the Republic of Indonesia President of the Republic of Indonesia, "Law Number 23 Year 2004 on the Elimination of Domestic Violence" (2004).

¹⁰ Madalaine Madalaine, Mohammad Ekaputra, and Marlina Marlina, "Legal Protection of Child Victims of Sexual Abuse Crime in Medan Police Station Area," *Locus Journal of Academic Literature Review* 3, no. 3 (2024): 237-50, <https://doi.org/10.56128/ljoalr.v3i3.291>.

¹¹ Meivanza Dwi Aurellia and Abdul Halim, "The Urgency of Establishing an Executor Institution Towards Fulfilling the Rights of Women and Children After Divorce," *Journal of Usm Law Review* 6, no. 2 (2023): 752, <https://doi.org/10.26623/julr.v6i2.7270>.

that legal proceedings do not further disadvantage vulnerable parties.¹² In this context, access to justice should be measured not only by the availability of formal legal procedures but also by how effectively those procedures protect victims.¹³

The Supreme Court has intended to harmonise judicial practice through various regulatory instruments, including Supreme Court Circular Letters (*Surat Edaran Mahkamah Agung*—SEMA). SEMA No. 3 of 2023 is particularly significant in divorce cases involving ongoing disputes and quarrels. The regulation provides that divorce may generally be granted when the spouses have been separated for at least six months, while an exception applies when domestic violence is established.¹⁴ The policy reflects an attempt to balance two potentially competing objectives, namely preserving marital relationships where reconciliation remains possible and preventing procedural requirements from prolonging situations that may endanger victims.¹⁵ Studies on the implementation of SEMA No. 3 of 2023 show that its application elicits different perceptions among parties and judicial actors, raising questions about the relationship between procedural requirements and substantive justice.¹⁶

The six-month separation requirement is intended to prevent premature divorce and to provide opportunities for reconciliation. Mediation and other dispute-resolution mechanisms may play an important role in determining whether marital conflict can still be resolved.¹⁷ Psychological involvement in divorce mediation has also been discussed as a way to help parties understand and resolve marital conflict. However, the same procedural orientation may produce different consequences when the underlying conflict involves domestic violence.¹⁸ Under these circumstances, prolonging the marital relationship or delaying the judicial process may expose victims to continued

¹² Abdurrahman, *Compilation of Islamic Law in Indonesia* (Jakarta: Akademika Presindo, 2018).

¹³ Asep Suherman Vedro Guslan, Abyan Haripraptiko, Muhammad Alvin Sandjaya, Nizam Tazmi, Ferin Almi Justisia, "Comparison of Laws Regarding the Crime of Domestic Violence in Indonesia and Malaysia," *Al Adl Harapan Law Journal* 5, no. 3 (2025): 1-21.

¹⁴ Mia Amalia Nida Ananta, Aji Mulyana, "Legal Protection for Victims of Domestic Violence," *Qawanin Journal of Legal Science* 6, no. 1 (2025): 20–27, <https://doi.org/10.62872/2c1x2296>.

¹⁵ Ghufroon Maksum Heri Sulaiman, "Divorce Due to Domestic Violence in Muara Enim (Study of the Analysis of the Decision of the Muara Enim Religious Court No. 864/pdt.G/2020/Pa.Me)," *Sabiluna: Journal of Islamic Studies* 1, no. 1 (2025): 48-67.

¹⁶ Ece Buyuksandalyaci Tunc et al., "Social determinants of sexual violence against pregnant women," *Clinical Epidemiology and Global Health* 10 (April 2021): 100706, <https://doi.org/10.1016/j.cegh.2021.100706>.

¹⁷ Lilik Andaryuni Mulyadi, "Implementasi Sema Nomor 3 Tahun 2023 Di Pengadilan Agama Samarinda (Studi Terhadap Persepsi Para Pihak)," *Bulletin of Community Engagement* 4, no. 3 (2024): 1–8, <https://doi.org/https://doi.org/10.51278/bce.v4i3.1501>.

¹⁸ D Salwa, S Parahdina, and ..., "Implications of the Amendment to the Marriage Law regarding the Marriage Age Limit in the Family Law System in Indonesia," *Journal Of Islamic And Law Studies (JILS)* 8, no. 1 (2024): 136–56, <https://doi.org/https://doi.org/10.18592/jils.v8i1.12860>.

physical, psychological, or economic harm. The exception for domestic violence in SEMA No. 3 of 2023 represents an important legal distinction between ordinary marital conflict and situations in which continued procedural delay may itself become harmful. This distinction is particularly important because not every domestic violence case is supported by conventional forms of evidence. Victims may not possess medical reports, police reports, or direct witnesses, particularly in cases involving psychological or economic abuse. Studies of domestic violence litigation have demonstrated that judicial consideration of the circumstances surrounding violence is essential for ensuring meaningful protection.¹⁹ At the same time, judicial decision-making must maintain procedural fairness and evidentiary reliability. Therefore, the challenge lies in determining how judges may assess the existence of domestic violence without either imposing an excessively rigid evidentiary burden on victims or disregarding the requirements of judicial prudence. Judicial discretion becomes particularly important here because judges must balance formal legal requirements with the concrete circumstances of each case.²⁰

The need to protect victims while preventing procedural mechanisms from causing further harm can also be examined through the lens of Islamic legal theory. Islamic family law recognises the importance of maintaining marriage, but preservation cannot be separated from protecting fundamental human interests and preventing harm. The principle of *sadd al-ẓarī'ah* provides a particularly relevant analytical framework because it focuses on preventing a permissible means or pathway from becoming a means toward *mafsadah* (harm). Contemporary studies have applied this doctrine to various areas of Islamic family law, demonstrating its potential as a preventive method for evaluating legal policies and judicial decisions.

In the context of SEMA No. 3 of 2023, the doctrine of *sadd al-ẓarī'ah* raises a specific analytical question, namely: *can the continued application of a formally valid procedural requirement become a ẓarī'ah, a pathway, to greater harm when applied to victims of domestic violence?* When the answer is affirmative, the exception to the six-month separation requirement may be understood as a preventive legal measure intended to block the continuation of harm.²¹ This approach differs from treating *Sadd al-ẓarī'ah* simply as a

¹⁹ M Yosep Alipio and Slamet Haryadi, "Optimizing Restorative Justice in the Settlement of Minor Crimes: A Humanist Approach in Criminal Law," *Peshum: Journal of Education, Social and Humanities* 4, no. 2 (2025): 3544–53, <https://doi.org/https://doi.org/10.56799/peshum.v4i2.8253>.

²⁰ Eid Adnan M. Chalid, "The Effectiveness of Mediation as an Alternative to Settlement of Domestic Violence Cases," *AL-Balad : Journal of Islamic Constitutional and Political Law* 4, no. 2 (2024): 1-15, <https://doi.org/https://doi.org/10.59259/ab.v4i2.188>.

²¹ Moh Rosil Fathony and Ellemmia Lorenza Pradana, "Comparative Analysis of Divorce and Its Legal Effects in Several Islamic Countries," *HAKAM: Journal of Islamic Law Studies and Islamic Economic Law* 7, no. 1 (2023), <https://doi.org/10.33650/jhi.v7i1.5770>.

general principle of *maqāṣid al-sharī'ah*. Rather, it focuses on the relationship between a specific legal procedure, the likelihood of harm resulting from its application, and the necessity and proportionality of preventive intervention.

This framework is reinforced by the broader principle of preventing harm in Islamic law. Protecting life, dignity, and family members is an important consideration in assessing legal policies, particularly where continuing to apply a procedural rule may expose an individual to serious harm. Preventing domestic violence and protecting victims can be connected to the objectives of protecting life (*ḥifẓ al-naḥs*), dignity and honour (*ḥifẓ al-'ird*), and family welfare.²² At the same time, the preventive approach must remain proportionate, ensuring that efforts to close one pathway to harm do not produce another form of injustice. This consideration is particularly important in divorce proceedings, where the interests of victims, spouses, and children may intersect.

Existing studies have examined SEMA No. 3 of 2023 from several perspectives, including judicial implementation, mediation, procedural requirements, domestic violence, and the protection of women and children. Other studies have examined domestic violence and divorce through particular court decisions, including cases adjudicated by Religious Courts.²³ However, the existing literature has not sufficiently connected the domestic violence exception in SEMA No. 3 of 2023 with the operational logic of *sadd al-ẓarī'ah*. Existing discussion tends to emphasise whether SEMA accelerates or delays divorce, whether it protects victims, and how parties perceive its implementation, while the doctrinal mechanism by which the exception may be justified as a preventive measure remains insufficiently elaborated.

This study positions *Sadd al-ẓarī'ah* not simply as an additional theoretical perspective but as the principal analytical framework for examining the preventive function of SEMA No. 3 of 2023. The framework is operationalised through five parameters, namely (1) the existence of a relevant legal means (*al-ẓarī'ah*), (2) the causal and probable relationship between the means and *maḥsadah*, (3) the nature and gravity of the resulting harm, (4) the necessity of preventive intervention, (5) the proportionality of the preventive measure and the avoidance of greater harm. These parameters provide criteria for determining whether the six-month separation requirement may function as a pathway to continuing harm in domestic violence cases and whether the exception established by SEMA constitutes an appropriate preventive response.

²² Fitri Maulida, Lathifah Munawaroh, and Alfian Qodri Azizi, "Kritik Maqashid Syari'ah Terhadap Syarat Berpisah Selama Enam Bulan Dalam Perceraian," *JURNAL USM LAW REVIEW* 8, no. 3 (September 2025): 1292–1311, <https://doi.org/10.26623/julr.v8i3.12187>.

²³ Eva Nurfitriani, Apriana Asdin, and Idul Adnan, "Optimizing Mediation as a Conflict Resolution Mechanism for Domestic Violence," *Al-Muqaronah: Journal of Comparative Mazhab and Law* 3, no. 1 (June 27, 2024): 99–109, <https://doi.org/10.59259/am.v3i1.199>.

The analysis also examined the relationship between *sadd al-ẓarī'ah* and judicial discretion. The issue is not whether the doctrine independently creates new procedural rules of evidence, but whether its preventive logic provides a normative justification for a contextual, victim-sensitive assessment of legally relevant evidence.²⁴ This approach is particularly relevant where psychological, economic, or other forms of domestic violence may be difficult to establish through conventional evidence.²⁵ Therefore, the analysis considers how judicial discretion can operate within existing legal boundaries while preventing procedural rigidity from producing greater harm to victims.²⁶

Based on these considerations, this study examines the normative and practical dimensions of SEMA No. 3 of 2023 in Religious Courts. It specifically addresses three questions. The first question is how the domestic violence exception in SEMA No. 3 of 2023 can be analysed through the operational parameters of *sadd al-ẓarī'ah*. The second question is how the preventive logic of *sadd al-ẓarī'ah* provides a normative justification for judicial discretion in assessing domestic violence and determining whether the six-month separation requirement should be waived. The third question is the extent to which the preventive function of SEMA No. 3 of 2023 is reflected in judicial practice, as evidenced by relevant court decisions. The results will contribute to the development of Indonesian Islamic family law by connecting procedural regulation, judicial discretion, victim protection, and the prevention of *mafsadah*.

2. Methods

This study employed a normative legal method to examine the legal and doctrinal implications of Supreme Court Circular Letter (SEMA) No. 3 of 2023 concerning the exception to the six-month separation requirement in divorce cases involving domestic violence.²⁷ It focused on the relationship between the regulation, victim protection, and the preventive function of *sadd al-ẓarī'ah*. The methodology did not include interviews or surveys; instead, it relied on legal norms, Islamic legal doctrines, and judicial decisions. Three approaches were used, namely statutory, conceptual, and case approaches. The statutory approach examined the legal framework governing divorce, domestic violence, and SEMA No. 3 of 2023. The conceptual approach analysed *sadd al-ẓarī'ah*, *mafsadah*,

²⁴ Mahmudin Bunyamin Siti Nur Janah, "Marriage Cancellation in the Review of Sadd Al-Dzari'ah," *Muslim* 6, no. 1 (2021): 1-22, [https://doi.org/Lukman Hakim](https://doi.org/Lukman%20Hakim), IAIN Ponorogo DOI: 10.21154/muslimheritage.v6i1.2787.

²⁵ Yulius Sodah, "Violence Against Women: Prevention and Handling A Social Psychology Review," *Syntax Idea* 5, no. 11 (November 25, 2023): 2327–36, <https://doi.org/10.46799/syntax-idea.v5i11.2912>.

²⁶ Rahmadani, Gema, Pagar and M Iqbal Irham, "Divorce Mediation: The Role and Influence of Psychologists in Divorce Conflict Resolution," *Rectum Journal* 7, no. 1 (2025): 156–75, <https://doi.org/http://dx.doi.org/10.46930/jurnalrectum.v7i1.5332> P-ISSN:2089-5771.

²⁷ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

victim protection, and judicial discretion. The case approach evaluated the selected Religious Court decisions to assess how the domestic violence exception is interpreted and applied in judicial practice.²⁸

The primary legal materials consist of Law No. 23 of 2004 on the Elimination of Domestic Violence, Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019, the Compilation of Islamic Law, SEMA No. 3 of 2023, and relevant Religious Court decisions. Secondary materials include books, scholarly articles, and previous studies on *sadd al-ẓarīʿah*, Islamic family law, domestic violence, divorce, judicial discretion, and victim protection. To operationalize *Sadd al-ẓarīʿah* as the analytical framework, this study used five parameters, namely (1) the existence of *al-ẓarīʿah*, namely a legally established procedure that may lead to harm, (2) the causal and probable relationship between the *ẓarīʿah* and *mafsadah*, namely whether the application creates a foreseeable risk of harm, (3) the nature and gravity of *mafsadah*, including physical, psychological, sexual, and economic harm and the risk of continued victimization, (4) preventive necessity, namely whether an exception to the general rule is necessary to prevent harm, (5) proportionality and prevention of greater harm, namely whether the preventive measure protects victims without undermining evidentiary reliability, procedural fairness, or judicial integrity.

In this study, the six-month separation requirement is the relevant *ẓarīʿah* to examine. The analysis does not assume that the requirement is inherently harmful; rather, it assesses whether the application in domestic violence cases may prolong or intensify harm to victims. The five parameters were applied to the relevant provisions of SEMA No. 3 of 2023 and the selected judicial decisions to compare the regulation's preventive purpose with its implementation in judicial practice.

The legal materials were analysed qualitatively through doctrinal legal analysis. The analysis involved four stages, namely (1) identifying relevant legal provisions and judicial reasoning, (2) interpreting through *Sadd al-ẓarīʿah*, (3) applying the five parameters to assess the relationship between the procedural requirement and potential *mafsadah*, (4) drawing conclusions regarding the legitimacy, limitations, and practical implications of the domestic violence exception in SEMA No. 3 of 2023.²⁹

²⁸ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, n.d.).

²⁹ Wanti Marpaung Arfa, Faisar Ananda, "Metodologi Penelitian Hukum Islam," *Prenadamedia Group*, 2016.

3. Results and Discussion

3.1. Overview of SEMA No. 3 of 2023

Supreme Court Circular Letter (SEMA) No. 3 of 2023 was issued as a judicial policy response to the development of divorce cases and the need to strengthen protection for vulnerable parties, particularly victims of domestic violence.³⁰ The regulation provides guidance for Religious Court judges in examining divorce cases based on continuous disputes and quarrels in which reconciliation is no longer reasonably possible.³¹ One principal provision requires that spouses have been separated for at least six months before divorce may be granted in cases based on continuous disputes and quarrels.³² The requirement is intended to ensure that divorce is not granted simply based on a temporary or impulsive conflict. It also ensures that the breakdown of the marriage has reached a condition where reconciliation is no longer possible.

SEMA No. 3 of 2023 introduces an important exception. The six-month separation requirement may be waived where there are legal facts indicating that one of the parties has committed domestic violence. This exception recognises that requiring a victim of domestic violence to remain separated for a prescribed period may not always be consistent with the protective function of family law.³³

This provision represents an important development from SEMA No. 1 of 2022, which required six months of separation for divorce based on continuous disputes and quarrels without providing the same explicit exception for domestic violence.³⁴ Therefore, SEMA No. 3 of 2023 introduces a more differentiated approach by distinguishing ordinary marital conflict from circumstances involving domestic violence.³⁵

³⁰ Dayu Annisa Mardhotillah, Johari Johari, and Wahidin Wahidin, "Child Maintenance in Divorce Cases After Sema No. 4 of 2016 at the Bangkinang Religious Court," *USRATY: Journal of Islamic Family Law* 2, no. 1 (September 28, 2024): 48–56, <https://doi.org/10.30983/usraty.v2i1.8416>.

³¹ Agustin Hanapi and Evi Juismaidar, "The Potential Impact of Domestic Violence on Increasing Divorce Rates (Case Study at the Meulaboh Syar'iyah Court)," *USRAH: Journal of Islamic Family Law* 5, no. 1 (April 30, 2024): 132–46, <https://doi.org/10.46773/usrah.v5i1.1331>.

³² Hasnawati et al., "Handling Divorce Cases Due to Domestic Violence at the Andoolo Religious Court," *Sultra Research of Law* 6, no. 2 (August 31, 2024): 83–92, <https://doi.org/10.54297/surel.v6i2.78>.

³³ Heni Rohaeni, Na'fan Tarihoran, and Aspandi, "Literature Review System: Analysis of the Causes of Divorce in Muslim Families in Indonesia Due to Domestic Violence," *Krtha Bhayangkara* 18, no. 2 (February 15, 2025): 406–16, <https://doi.org/10.31599/krtha.v18i2.2515>.

³⁴ Supreme Court, SEMA Number 3 Year 2023 Regarding the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2023.

³⁵ Supreme Court of the Republic of Indonesia, "Circular Letter of the Supreme Court of the Republic of Indonesia Number 1 Year 2022 on the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2022 as Guidelines for the Implementation of Tasks for the Courts," Supreme Court (2022).

This distinction matters because the same procedural requirement can have different legal consequences. In ordinary marital disputes, a period of separation may provide an opportunity for reflection and reconciliation. However, in domestic violence cases, procedural delay may expose victims to continuing physical, psychological, sexual, or economic harm. The domestic violence exception shifts the focus from the simple application of a general procedural requirement toward the protection of parties facing a substantially different level of risk.³⁶

3.2. Normative Analysis of the Application of SEMA No. 3 of 2023 in Religious Courts

SEMA plays an important role in promoting consistency in judicial practice.³⁷ As the highest court, the Supreme Court has a supervisory and guiding function over the lower courts, including efforts to harmonise the interpretation and application of law.³⁸ SEMA is one instrument through which the Supreme Court guides judges in responding to legal developments and preventing disparities in judicial practice.³⁹

Within this framework, SEMA No. 3 of 2023 aims to balance legal certainty with the protection of vulnerable parties in divorce proceedings. The six-month separation requirement for divorce based on continuous disputes and quarrels is intended to ensure that divorce reflects a persistent breakdown of the marital relationship rather than a temporary conflict.⁴⁰ However, the exception for cases involving domestic violence recognises that the same procedural requirement may produce different consequences when applied to victims whose safety and dignity are at risk.⁴¹

³⁶ Putri Cicilia Tambun, Novea Elysa Wardhani, and Syamhudian Noor, "Consideration of Religious Court Judges Regarding Divorce on the Ground of Short House Separation (Study of Decision Number 375 Pdt.G/2024/PA.Plk)," *Al-Hikmah: Journal of Religion and Science* 22, no. 1 (April 13, 2025): 105–15, [https://doi.org/10.25299/ajaip.2025.vol22\(1\).21698](https://doi.org/10.25299/ajaip.2025.vol22(1).21698).

³⁷ Shofa Fathiyah and Faisal Santiago, "Efforts to Protect Victims of Domestic Violence in Divorce Cases in Court," *Journal Research of Social Science, Economics, and Management* 3, no. 12 (June 30, 2024), <https://doi.org/10.59141/jrssem.v3i12.675>.

³⁸ Neisty Pratiwi, "Inheritance Division in Islamic Family Law: Conflicts and Solutions in Religious Courts," *Ar-Risalah Islamic Media for Education and Islamic Law* 23, no. 1 (April 20, 2025): 72, <https://doi.org/10.69552/ar-risalah.v23i1.2762>.

³⁹ Mukhtaruddin Bahrum, "Problematics of Isbat Nikah Poligami Sirri," *Al-Adalah: Journal of Islamic Law and Politics* 4, no. 2 (2019): 194–213, <https://doi.org/10.35673/ajmpi.v4i2.434>.

⁴⁰ Varsha Savilla Akbari Candra *Suradipraja*, "A Victimological Review of Revenge Porn Victims According to Law Number 12 of 2022 on the Crime of Sexual Violence based on Victim Typology," *Padjadjaran Law Review* 12, no. 1 (June 28, 2024), <https://doi.org/10.56895/plr.v12i1.1633>.

⁴¹ Rheina Aini, Graciella Azzura, and Putri Ananda, "The Position and Authority of the Supreme Court in Organizing Judicial Power in Indonesia," *Journal of Citizenship* 8, no. 1 (2024): 303–9, <https://doi.org/https://doi.org/10.31316/jk.v8i1.6150>.

The normative issue is not the existence of the six-month separation requirement, but its application to legally and factually different circumstances.⁴² Applying the same procedural requirement to ordinary marital disputes and cases involving domestic violence may produce unequal substantive consequences.⁴³ For victims of domestic violence, procedural delay may prolong psychological distress, economic dependence, or exposure to repeated violence.⁴⁴ This concern is particularly relevant because domestic violence often occurs within the private sphere of the household, where conventional evidence may be difficult to obtain.⁴⁵

Consequently, the exception under SEMA No. 3 of 2023 requires judicial assessment. The exception cannot be understood as an automatic consequence of an allegation of domestic violence.⁴⁶ Judges must examine the relevant legal facts and evidence before deciding whether to apply the exception.⁴⁷ This places judicial reasoning at the centre of implementing SEMA, particularly in balancing the procedural requirement, evidentiary considerations, and the protection of victims.⁴⁸

The situation creates a two-sided normative challenge. An excessively rigid application of evidentiary requirements may prevent genuine victims from obtaining the exception, while an overly permissive approach may undermine procedural fairness and the reliability of judicial decisions. The exception's effectiveness therefore depends not only on the wording of SEMA but also on how judges assess the circumstances of individual

⁴² Arif Fikri Fathul Mu'in, Triono, Rudi Santoso, Relit Nur Edi, "Comparative Analysis of the Application of Family Law in Egypt and Indonesia," *Al-Ahwal Al-Syakhsyiyah: Journal of Family Law and Islamic Justice* 2, no. 2 (2022): 123–32, <https://doi.org/10.15575/as.v2i2.14327>.

⁴³ Hanafi Ilba and Ibnu Radwan Siddik Turnip, "The Six-Month Period of Residence Separation as a Formal Requirement for Filing a Divorce on the Ground of Quarrel: Study of Supreme Court Decision No. 421 K/Ag/2023)," *As-Syar'i: Journal of Family Guidance & Counseling* 6, no. 2 (May 18, 2024): 1738–54, <https://doi.org/10.47467/as.v6i2.6589>.

⁴⁴ Nurhasnah Nurhasnah, "Opportunities and Challenges for Fulfilling Women's Rights after Divorce in Religious Courts," *USRATY : Journal of Islamic Family Law* 2, no. 1 (October 8, 2024): 71–79, <https://doi.org/10.30983/usraty.v2i1.7646>.

⁴⁵ Mujiono Mujiono, Romlan Romlan, and Syaiful Bahri, "Juridical Analysis of Factors Causing High Divorce Rates in Jombang Regency," *Justicia Journal* 14, no. 1 (March 27, 2025): 135–57, <https://doi.org/10.32492/jj.v14i1.14109>.

⁴⁶ Dian Pranata Depari Indah Nur Shanty Saleh, Nurul Widhanita Y. Badilla, Apriyanto Apriyanto, *The Justice System in Indonesia: Process, Rights, and Justice* (Jambi: Sonpedia Publishing, 2024), 1.

⁴⁷ Ana Ulfiana, Indah Listyorini, and Muhamamd Yasir Majeed, "Judges' Considerations In Divorce Cases Due To Broken Marriage: An Analysis Of Contemporary Islamic Family Law," *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)* 7, no. 1 (March 2025): 135–52, <https://doi.org/10.20885/mawarid.vol7.iss1.art8>.

⁴⁸ Dadan Herdiana and Dian Ekawati, "Legal Certainty of Interfaith Marriages After the Issuance of Supreme Court Circular Letter Number 2 of 2023 in Adjudicating Marriage Registration Application Cases," *Journal of Citizenship* 8, no. 1 (2024): 57–69, <https://doi.org/https://doi.org/10.30762/mahakim.v8i2.351>.

cases.⁴⁹ From a gender justice perspective, the exception also reflects a shift from formal equality toward substantive protection.⁵⁰ Treating all divorce cases identically may overlook the unequal power relations between victims and perpetrators of domestic violence.⁵¹ A victim-centred approach requires judges to consider whether applying a procedural requirement may expose a vulnerable party to further harm.⁵² This does not mean disregarding procedural law, but applying it in a manner responsive to the particular circumstances of each case.⁵³

The normative problem can be formulated in terms of the relationship between procedural delay and potential harm. A procedural requirement that is generally intended to provide an opportunity for reconciliation may have a different legal consequence when applied to a relationship characterised by domestic violence.⁵⁴ Under these circumstances, requiring the victim to remain within a prolonged legal process may potentially intensify psychological, economic, or other forms of harm.⁵⁵ The relevant question is therefore not whether the six-month requirement is generally legitimate, but whether its application in a particular domestic violence case may cause greater harm than the harm it is intended to prevent.⁵⁶

⁴⁹ Muhammad Nafi and Mohammad Sahli Ali, "Mubadalah: A Gender-Fair Interpretation Method for Religious Court Judges in Deciding Family Law Cases," *Equality: Journal of Law and Justice* 1, no. 2 (October 1, 2024): 137–58, <https://doi.org/10.69836/equality-jlj.v1i2.139>.

⁵⁰ Rosita Ibrahim Rosita, Muhammad Zainuri, and Ahmad Nurwahid, "A Review of Law No. 23/2004 on Domestic Neglect by Husbands as a Form of Domestic Violence," *Teraju* 7, no. 01 (March 24, 2025), <https://doi.org/10.35961/teraju.v7i01.1705>.

⁵¹ Gina Maulida and Muhamad Romdoni, "Legal Protection for Victims of Sexual Harassment Who Experience Secondary Victimization on Social Media," *Southeast Asian Journal of Victimology* 2, no. 1 (30 June 2024): 59, <https://doi.org/10.51825/sajv.v2i1.25445>.

⁵² Badrun Taman et al., "Time-Related Rulings in Fiqh Munakahat: A Contemporary Integration of Astronomical and Jurisprudential Analysis," *MILRev: Metro Islamic Law Review* 4, no. 2 (July 1, 2025): 797–821, <https://doi.org/10.32332/8PVNZ650>; Rohmadi et al., "Optimizing Prenuptial Agreements for Asset Protection: A Maqashid Sharia Based Approach," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (2024): 375–98, <https://doi.org/10.29240/JHI.V9I2.11064>.

⁵³ Siti Nurlaila et al., "Reconstructing Gender-Responsive Restorative Justice for Domestic Violence: A Study of Contextual Islamic Law in Indonesia," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 13, no. 1 (May 2026): 344, <https://doi.org/10.29300/mzn.v13i1.10542>.

⁵⁴ Maghfirotul Mutsaniyah and Nurul Syazana Alyaa, "When Justice Overrides Procedure: Unpacking the Reluctance to Apply SEMA No. 3 of 2023 in Verstek Divorce Cases," *Sakina: Journal of Family Studies* 9, no. 2 (June 2025): 242–58, <https://doi.org/10.18860/jfs.v9i2.15543>.

⁵⁵ Fuad Rosyadi and Siti Zumrotun, "Analisis Normatif Dan Yuridis Terhadap Implementasi Uu Nomor 23 Tahun 2004 Dalam Penganganan Kekerasan Dalam Rumah Tangga Di Indonesia," *USRAH: Jurnal Hukum Keluarga Islam* 6, no. 4 (October 2025): 262–74, <https://doi.org/10.46773/usrah.v6i4.2175>.

⁵⁶ Yayat Dimyati, "Analysis of Judges' Decisions in Gender-Based Violence Cases at the Religious Courts," *VRISPRAAK: International Journal of Law* 8, no. 1 (March 2024): 50–56, <https://doi.org/10.59689/vris.v8i1.1163>.

This distinction provides the normative basis for examining SEMA No. 3 of 2023 through the doctrine of *sadd al-ẓarī'ah*. The central issue is whether the six-month separation requirement, when applied to a domestic violence situation, may become a pathway to *mafsadah*, and whether the exception established by SEMA functions to prevent the consequence. The subsequent analysis examines the domestic violence exception through the operational parameters of *Sadd al-ẓarī'ah* established in the methodology.

3.3. *Sadd al-ẓarī'ah* as an Analytical Framework for the Domestic Violence Exception under SEMA No. 3 of 2023

Sadd al-Ẓarī'ah is a method in Islamic law that serves as a preventive measure to prevent harm or damage (*mafsadah*). In terminology, *sadd* means to close, while *ẓarī'ah* suggests a path to something. In Islamic law, this principle closes paths that can lead to actions contrary to Sharia values. Applying *sadd al-ẓarī'ah* aims to protect people's interests by preventing actions that, although legally neutral or permissible, have a high potential to cause future harm.⁵⁷

In the Islamic justice system, the principle of *sadd al-ẓarī'ah* is widely used to formulate laws that protect individuals and society from actions that can damage social and legal order.⁵⁸ One implementation of this principle appears in divorce regulations, especially in cases involving domestic violence. Protracted divorce can worsen the victim's condition, both psychologically, socially, and economically. Therefore, Islamic law provides a protective mechanism through the concept of *sadd al-ẓarī'ah* by preventing a process and providing legal convenience for victims to obtain justice immediately.⁵⁹

In the context of positive law in Indonesia, *sadd al-ẓarī'ah* appears in Supreme Court Circular Letter (SEMA) No. 3 of 2023. This SEMA provides guidelines for religious courts in handling divorce cases, especially regarding delaying the process and protecting the rights of women and children after divorce. In domestic violence cases, *sadd al-ẓarī'ah* is applied by giving special consideration to victims to avoid being trapped in increasingly

⁵⁷ Irfan Mufida, Ahmad Wahidi, and Mochammad Agus Rachmatulloh, "Consideration of Judges of the Kediri City Religious Court in Determining Marriage Dispensation Applications from the Perspective of Sadd Al-Dzari'ah," *Sakina: Journal of Family Studies* 8, no. 2 (June 22, 2024): 274–89, <https://doi.org/10.18860/jfs.v8i2.9500>.

⁵⁸ Inayatillah Inayatillah et al., "Social History of Islamic Law from Gender Perspective in Aceh: A Study of Marriage Traditions in South Aceh, Indonesia," *Samarah: Journal of Family Law and Islamic Law* 6, no. 2 (October 7, 2022): 60–80, <https://doi.org/10.22373/SJHK.V6I2.14598>.

⁵⁹ Aria Zurnetti et al., "Model of Legal Protection for Women and Children Victims of Violent Crimes through Prosecutor Guidelines No. 1 of 2021 concerning Access to Justice for Women and Children in Handling Criminal Cases," *Nagari Law Review* 7, no. 3 (May 31, 2024): 527, <https://doi.org/10.25077/nalrev.v.7.i.3.p.527-543.2024>.

harmful conditions. With this SEMA, religious courts can respond more effectively to the urgency of divorce cases, especially regarding victims' safety.⁶⁰

In judicial practice, proof may also be strengthened through testimony from psychologists, psychiatrists, counsellors, social workers, and medical personnel who treat victims. Expert testimony explains the psychological impact experienced by the victim to help the judge obtain a conviction regarding the occurrence of psychological violence, which is often difficult to prove through conventional evidence.

Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Women Cases in Front of the Law is highly relevant. The regulation requires judges to avoid gender stereotypes, consider unequal power relations, and attend to victims' vulnerability during the trial process. Therefore, the proof of domestic violence cases is no longer understood as purely formalistic, but also oriented towards protecting the rights of victims. The application of *sadd al-ẓarīʿah* in SEMA No. 3 of 2023 also prevents the abuse of rights by perpetrators of domestic violence who intend to prolong the divorce process for continued control or to suppress the victim. Before this regulation, there were many cases where perpetrators of domestic violence used legal loopholes to delay divorce to maintain dominance over the victim. By accelerating the divorce process for victims, religious courts ensure that their rights are better protected and that they are no longer under prolonged psychological pressure.⁶¹

The aspect of protection for women and children in divorce due to domestic violence is also the main concern in the principle of *sadd al-ẓarīʿah*. With the acceleration of the legal process, victims of domestic violence can immediately get a verdict that provides legal certainty related to child custody, alimony, and other legal protections. This step not only protects victims from long-term negative impacts, but also prevents domino effects that can arise, such as prolonged trauma, poverty due to loss of economic access, and the risk of repeated violence.⁶² As is the case in Malaysia, the fast-track divorce system has been introduced to address complex divorce issues and speed up the legal process, especially for victims of domestic violence. This approach allows the parties, especially women and children, to obtain justice more quickly and effectively, without being trapped in a protracted legal process that can add to suffering.⁶³

⁶⁰ Muchammad Hammad, "Women's Rights After Divorce: Nafkah Iddah Talak in Indonesian, Malaysian, and Muslim Family Law," *Journal of Al-Ahwal* 7, no. 1 (2014): 51-52.

⁶¹ Fathur Rahman Alfa, "Early Marriage and Divorce in Indonesia," *Scientific Journal of Ahwal Syakhshiyah (JAS)* 1, no. 1 (2019): 49, <https://doi.org/10.33474/jas.v1i1.2740>.

⁶² Heni Rohaeni, Naʿan Tarihoran, and Aspandi, "Literature Review System: An Analysis of the Causes of Divorce in Muslim Families in Indonesia Due to Domestic Violence."

⁶³ Solihah Mansor and Mohd Norhusairi Mat Hussin, "Perceraian Bagi Perkahwinan Yang Berusia Kurang Dari Tempoh Satu Tahun Di Mahkamah Rendah Syariah Petaling Divorce For Marriages That Are Less

The shar'i assertions that underlie the application of the *sadd al-zari'ah* principle in this context include the words of Allah SWT in Surah Al-Baqarah verse 195:

وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ

Meaning: *Spend in the way of Allah, do not plunge yourselves into destruction, and do good. Verily, Allah loves those who do good.*

This verse shows the importance of guarding oneself from dangers that can lead to destruction, including in the context of delaying divorce, aggravating the suffering of victims of domestic violence.

The word of Allah in surah An-Nisa verse 19:

وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا

Meaning: *Associate with them in an appropriate manner. If you do not like them, (be patient), for it may be that you dislike something, but Allah has made much good in it.*⁶⁴

This verse underpins the importance of treating a spouse well. When domestic life is no longer viable due to violence, then there is no virtue in forcibly maintaining the relationship, and legal policies should favour the protection of victims.

Hadiths of the Prophet Muhammad also reinforce this principle:

لَا ضَرَّ وَلَا ضَرَّارَ

Meaning: *Do not cause harm to yourself, and do not cause harm to others* (HR. Ibn Majah and Daruquthni).⁶⁵

This Hadith states that Islamic law does not condone actions that harm oneself or others. Therefore, the omission of legal proceedings that prolong the suffering of victims of domestic violence contradicts the principle.

The implementation of *sadd al-zari'ah* in SEMA No. 3 of 2023 emphasises that Islamic law can provide flexible solutions to complex social problems, including divorce cases involving domestic violence. Under this regulation, religious courts conduct legal proceedings and protect the rights of victims seeking justice. Therefore, the principle of *sadd al-zari'ah* shows that Islamic law is normative and applicable to legal challenges in the modern era.

SEMA allows judges to refuse to postpone divorce when there are indications of domestic violence, following the principles of *hifz al-nafs* (protecting the soul) and *hifz al-'ird* (protecting honour). This is also in line with Law No. 23/2004 on the Elimination

Than A Year In Petaling District Shariah Court," *Journal Of Shariah Law Research* 8, no. 1 (January 2023): 33–70, <https://doi.org/10.22452/jslr.vol8no1.2>.

⁶⁴ Ministry of Religious Affairs, *Al-Qur'an and its Translation* (Bandung: Diponegoro, 2006), 49.

⁶⁵ Maktabah Syamilah, "Sunan Ibn Majjah Juz 5," n.d.

of Domestic Violence, emphasising that the state must guarantee the protection of victims of domestic violence, including in the legal aspect. From an Islamic law perspective, every policy must be assessed based on its potential *maslahat* (benefit) and *mafsadat* (harm). SEMA No. 3 of 2023 policy has various potential *maslahat* in the religious justice system, especially in providing better access to justice for victims of divorce, especially those experiencing domestic violence. One of the main *benefits* of this policy is accelerating the judicial process, which prevents victims from protracted legal uncertainty. With simplified procedures, victims can obtain a clear legal decision and continue living without enduring emotional and financial pressure.⁶⁶

In fiqh, *sadd al-ẓarī'ah* has a conceptual partner in *Fath al-Dzari'ah*, which opens the way to an act with the potential to produce benefits. When *sadd al-ẓarī'ah* aims to close the means to *mafsadah*, then *Fath al-Dzari'ah* opens the means that lead to benefits. In the context of SEMA Number 3 of 2023, accelerating divorce for victims of domestic violence not only closes the path to repeated violence, but also opens up access to legal protection, psychological recovery, and a safer life.⁶⁷

The policy falls under *maslahat daruriyyah* because it directly protects life (*hifz al-nafs*) and honour (*hifz al-'ird*). At the same time, accelerating case settlement also reflects *hajiyyah* by reducing victims' psychological and economic burdens, and *tahsiniyyah* by creating a more humane, victim-centred judicial process.

According to Al-Qarafi, *sadd al-ẓarī'ah* is used when an act that was originally *mubah* has a strong potential to cause *mafsadah*. Ibn al-Qayyim emphasised that the Shari'ah is built on achieving *maslahat* and preventing *mafsadah*; hence, closing the road to destruction is part of the Shari'ah's purpose.⁶⁸ Meanwhile, al-Syatibi framed *Sadd al-ẓarī'ah* as a means to keep the *maqasid al-shari'ah* effective in social life. From this view, the exception in SEMA No. 3 of 2023 is considered a way to close the door to the sustainability of violence while also opening access to victim protection.⁶⁹

This policy also has several challenges that must be considered to avoid causing *mafsadat*. One of the potential *mafsadat* is the provision in SEMA No. 3 of 2023, which

⁶⁶ Khairuddin Khairuddin, Badri Badri, and Nurul Auliyana, "Judges' Consideration of Post-Divorce Maintenance Decisions (Analysis of the Decision of the Aceh Syar'iyah Court Number 01/Pdt.G/2019/MS.Aceh)," *EL-USRAH: Journal of Family Law* 3, no. 2 (2020): 164, <https://doi.org/10.22373/ujhk.v3i2.7700>.

⁶⁷ Fitri Maulida, Lathifah Munawaroh, and Alfian Qodri Azizi, "Kritik Maqashid Syari'ah Terhadap Syarat Berpisah Selama Enam Bulan Dalam Perceraian."

⁶⁸ Johnson Kawakib dan Hafdz Syuhud, "Implementation of the Concept of Sadd Al-Dzari'ah in Islamic Law (Perspective of Ibn Al-Qayyim Al-Jauziyah and Ibn Hazm)," *International Journal of Philosophy* 9, no. 4 (2021): 193, <https://doi.org/10.11648/j.ijp.20210904.13>.

⁶⁹ Fahmi and Firdaus, "Pemikiran Imam Al-Syatibi Tentang Maqashid Al-Syariah," *I'tisham: Journal of Islamic Law and Economics* 3 (2023): 140–58.

regulates the postponement of divorce on the grounds of continuous quarrels and disputes without considering the special situation of each spouse, such as domestic violence. This policy can obstruct couples who are already unable to maintain their household, forcing them to face longer procedures because of the postponement rule.⁷⁰ In addition, it requires parties filing for divorce on the grounds of constant quarrels and disputes to include evidence and witnesses to substantiate their claims. This requirement may be an obstacle, since domestic quarrels often occur in private and cannot always be proven through documentation or third-party testimony. This can make it difficult for either party to prove their case, prolonging the resolution and potentially adding to the emotional and financial burden.⁷¹

The requirement to present witnesses in divorce cases on the grounds of quarrel also opens up opportunities for manipulation and non-objective testimony. Interested parties can easily present witnesses who provide testimony in their favour, even when this is not the case. This situation can disadvantage parties who want to end the marriage on legitimate grounds but struggle to find credible witnesses.⁷²

From a gender perspective, this SEMA is a progressive step in protecting women as a vulnerable group in unequal household relations. In practice, women who are victims of domestic violence often experience revictimization by the legal system, due to the long process, heavy evidence requirements, as well as economic and social dependence on the perpetrator.⁷³ The *sadd al-zarī'ah* approach provides a legitimate basis for policies that accelerate the divorce process for victims of domestic violence to avoid continuing to be in physically and psychologically harmful relationships. Gender analysis reinforces the importance of differentiating between the legal needs of victims and perpetrators, rather than treating both symmetrically.⁷⁴

The potential for *mafsadah* remains, especially when the provision to postpone divorce for couples who only experience constant arguments is applied without an exception for cases of violence. Provisions regarding evidence also still create inequality for women, because not all domestic disputes have witnesses or documentation that can be submitted in court. This inequality leads to procedural injustice for the most

⁷⁰ Mufida, Wahidi, and Rachmatulloh, "Consideration of Judges of the Kediri City Religious Court in Determining Marriage Dispensation Applications from the Perspective of Sadd Al-Dzari'ah."

⁷¹ Heri Sulaiman, "Divorce Due to Domestic Violence in Muara Enim (Study of the Analysis of the Decision of the Muara Enim Religious Court No. 864/pdt.G/2020/Pa.Me)."

⁷² Madalaine, Ekaputra, and Marlina, "Legal Protection of Child Victims of Sexual Harassment Crime in Medan Police Area."

⁷³ Laras Shesa et al., "Reformulating Progressive Fiqh of Talak (Divorce): A Contemporary Study of the Principle of Making Divorce More Difficult in SEMA No. 1 of 2022 for Women's Protection," *MILRev: Metro Islamic Law Review* 3, no. 2 (December 2024): 236–62, <https://doi.org/10.32332/milrev.v3i2.9950>.

⁷⁴ Sodah, "Violence Against Women: Prevention and Treatment A Social Psychology Review."

vulnerable parties. To avoid the *mafsadat*, religious courts need to be given greater judicial discretion in assessing evidence of violence based on psychological testimony, counselling reports, or expert testimony, not just based on conventional evidence such as post-mortem reports or witnesses. The gender-sensitive justice approach must be used as a reference to ensure that the principle of *sadd al-ẓarī‘ah* does not only become an abstract norm, but an applicable solution for victims.

3.4. Application of SEMA No. 3 of 2023 in Judicial Practice

The preventive function of SEMA No. 3 of 2023 can be assessed through judicial decisions that demonstrate how the six-month separation requirement interacts with the domestic violence exception.⁷⁵ Judicial practice indicates that the exception is not applied automatically; rather, judges determine whether the factual and evidentiary circumstances of a case establish domestic violence sufficiently to justify departing from the general procedural requirement.

A particularly relevant example is Decision No. 525/Pdt.G/2024/PA.Sit of the Situbondo Religious Court.⁷⁶ In this case, the parties had separated for less than six months when the divorce petition was filed. The wife alleged repeated domestic violence, including physical violence that caused bleeding, and presented documentary and witness evidence. The court also considered evidence that the husband had previously been prosecuted and convicted in a domestic violence case.⁷⁷ Evidence showed that the violence had occurred, and the court expressly considered the domestic violence exception under SEMA No. 3 of 2023.

The Situbondo Religious Court's reasoning is particularly significant in light of *sadd al-ẓarī‘ah*. The court stated that maintaining the marriage under the circumstances could produce greater harm than benefit and expressly relied on the legal maxim *dar'u al-mafāsīd awlā min jalb al-maṣāliḥ*. Consequently, the court considered the divorce even though the six-month separation period had not been fulfilled. This decision provides a concrete example of the preventive logic identified. The general procedural requirement is not treated as an absolute barrier when its continued application may expose a party to further harm and when domestic violence has been established through relevant evidence.

⁷⁵ Kristel A. Krella et al., “Enhancing Safety for Separating Families Affected by Domestic and Family Violence: A Scoping Review of Modifiable Factors,” *Trauma, Violence, & Abuse* 27, no. 3 (July 2026): 796–811, <https://doi.org/10.1177/15248380251325195>.

⁷⁶ Pengadilan Agama Situbondo, *Putusan Nomor 525/Pdt.G/2024/PA.Sit*, 2024, 35–37.

⁷⁷ Amir Masoud Sharifnia et al., “Muslim Women’s Experiences of Domestic Violence and Abuse: A Meta-Ethnography of Global Evidence,” *Trauma, Violence, & Abuse* 26, no. 4 (October 2025): 694–711, <https://doi.org/10.1177/15248380241286836>.

A contrasting approach appears in Decision No. 12/Pdt.G/2025/PTA.Plk of the Palangka Raya High Religious Court.⁷⁸ The parties had been separated for four months and twenty-four days. Although domestic violence was alleged, the appellate court found that the allegation had not been sufficiently established. The court found the absence of medical evidence or direct witness testimony concerning physical violence, the absence of psychological recommendations establishing psychological harm, and the lack of sufficient evidence of other forms of domestic violence. The witnesses' statements were also regarded as *testimonium de auditu* because they did not directly observe or hear the alleged events.⁷⁹ Consequently, the court could not apply the exception under SEMA No. 3 of 2023, and it rejected the claim.

The contrast between these decisions demonstrates that the domestic violence exception operates through fact-sensitive judicial assessment rather than automatic procedural exemption. In the Situbondo case, the combination of witness testimony, documentary evidence, and a previous criminal conviction provided a sufficient factual basis for recognising domestic violence and applying the exception. In Palangka Raya, insufficient reliable evidence prevented the court from reaching the same conclusion. This difference illustrates the proportionality dimension of *sadd al-ẓarī'ah*: preventing harm cannot be separated from the requirement that the underlying harm be established through legally relevant evidence.

In another case, Decision No. 218/Pdt.G/2024/PA.Prob of the Probolinggo Religious Court, provides a useful comparison with the general rule. The parties had been separated for approximately seven months, exceeding the six-month requirement.⁸⁰ The court referred to SEMA No. 3 of 2023 and found that the marital relationship had irretrievably broken down, thereby granting the divorce. This decision demonstrates that the exception for domestic violence does not replace the general six-month requirement; rather, it operates as a specific exception where domestic violence is established before the general period has elapsed.

Collectively, these decisions indicate that SEMA No. 3 of 2023 functions as a preventive legal instrument in two complementary ways. The general six-month requirement remains applicable where the circumstances of the case do not establish an exception, while the domestic violence exception allows the court to prevent procedural delay from becoming an additional source of harm when domestic violence has been sufficiently established. Therefore, the judicial decisions support the *sadd al-ẓarī'ah* analysis developed in this study. The procedural requirement constitutes the relevant *ẓarī'ah*

⁷⁸ Pengadilan Tinggi Agama Palangka Raya. *Putusan Nomor 12/Pdt.G/2025/PTA.Plk*. 2025.

⁷⁹ Tambun, Wardhani, and Noor, "Pertimbangan Hakim Pengadilan Agama Tentang Perceraian Dengan Alasan Pisah Rumah Singkat (Studi Putusan Nomor 375 Pdt.G/2024/PA.Plk)."

⁸⁰ Pengadilan Agama Probolinggo. *Putusan Nomor 218/Pdt.G/2024/PA.Prob*. 2024.

when its application may prolong exposure to harm, while the exception serves as a preventive measure to avoid greater *mafsadah*. At the same time, the contrasting evidentiary outcomes demonstrate that the preventive function of SEMA depends substantially on judicial assessment of evidence. This result provides the basis for examining judicial discretion in greater detail.

Table 1. Comparative Analysis of Judicial Decisions on the Domestic Violence Exception under SEMA No. 3 of 2023

Judicial Decision	Separation Period	Domestic Violence Finding	Evidentiary Basis	Application of SEMA No. 3 of 2023	<i>Sadd al-ẓarī'ah</i> Implication
PA Situbondo No. 525/Pdt.G/2024/PA.Sit	Less than 6 months	Domestic violence established	Documentary evidence, witness testimony, and prior criminal case	Exception applied; divorce granted	Procedural delay was prevented from producing greater mafsadah
PTA Palangka Raya No. 12/Pdt.G/2025/PTA.Plk	4 months 24 days	Domestic violence not sufficiently established	Insufficient direct evidence; testimonium de auditu; no adequate medical/psychological evidence	Exception not applied	Proportionality limits the preventive exception
PA Probolinggo No. 218/Pdt.G/2024/PA.Prob	Approximately 7 months	General marital conflict	Evidence of continuous disputes and separation	General six-month requirement satisfied	The <i>Sadd al-ẓarī'ah</i> exception was unnecessary because the general rule was fulfilled.

Source: Author's analysis based on Decision No. 525/Pdt.G/2024/PA.Sit, Decision No. 12/Pdt.G/2025/PTA.Plk, and Decision No. 218/Pdt.G/2024/PA.Prob.

The comparison demonstrates that the domestic violence exception under SEMA No. 3 of 2023 operates through a fact-sensitive judicial assessment rather than an automatic exemption from the six-month requirement. The Situbondo decision shows the exception's preventive function when domestic violence is supported by sufficient evidence, while the Palangka Raya decision illustrates its evidentiary and proportionality limits. The Probolinggo decision confirms that the exception does not replace the general rule when the six-month period has already been fulfilled. These variations indicate that the *sadd al-ẓarī'ah* function of SEMA is realised through judicial assessment of the relationship between procedural delay, established harm, and the reliability of evidence.

The central issue shifts from the exception's existence to how judges assess evidence of domestic violence within the boundaries of procedural law.

3.5. Judicial Discretion in Assessing Domestic Violence Evidence: A *Sadd al-ẓarī'ah* Perspective

The judicial decisions examined demonstrate that the domestic violence exception under SEMA No. 3 of 2023 depends substantially on judicial assessment of evidence. The contrasting outcomes between the Situbondo and Palangka Raya cases show that the exception is neither automatic nor purely procedural. Rather, judges must determine whether the alleged domestic violence has been sufficiently established and whether the circumstances justify departing from the general six-month separation requirement. This evidentiary assessment becomes particularly important because domestic violence, especially psychological and economic, may occur within the private sphere and does not always produce visible or conventional forms of evidence.⁸¹

Judicial discretion in this context should not be understood as the authority to disregard evidentiary rules. It refers instead to the judge authority to evaluate legally relevant and admissible evidence in light of the particular circumstances of each case. The Situbondo decision shows that witness testimony, documentary evidence, and other facts may collectively provide a sufficient basis to recognise domestic violence and apply the exception.⁸² In contrast, the Palangka Raya decision shows that where the alleged violence is not sufficiently established, the exception cannot be applied based on an allegation alone. Judicial discretion operates at the level of evidentiary assessment and factual qualification, rather than eliminating the requirement of proof.⁸³ This approach is consistent with the broader need for Religious Court judges to respond toward domestic and family violence through procedures that are sensitive to the circumstances and risks faced by victims.⁸⁴

From the perspective of *sadd al-ẓarī'ah*, the distinction is crucial. The relevant concern is not the evidentiary requirement, but the possibility that an excessively rigid

⁸¹ Husin Wattimena dan Muis S. A. Pikahulan, "Legal Study of Evidence of Domestic Psychological Violence in Indonesia," *Journal of Law and Sustainable Development* 13, no. 4 (23 April 2025): e04380, <https://doi.org/10.55908/sdgs.v13i4.4380>.

⁸² Lijun Zhang, "When Domestic Violence Becomes 'Family Conflict,'" *Journal of Language and Politics*, June 2026, <https://doi.org/10.1075/jlp.25281.zha>.

⁸³ Xin He, "Threat to Family Stability or Social Stability? Domestic Violence Protection Orders in Two Chinese Courts," *Law & Social Inquiry* 50, no. 2 (May 2025): 378–405, <https://doi.org/10.1017/lsi.2025.6>.

⁸⁴ Balawyn Jones and Amira Aftab, "Inside Indonesia's Religious Courts: An Argument for Domestic and Family Violence Screening and Exemption from Compulsory Mediation," *Oxford Journal of Law and Religion* 12, no. 2 (June 2024): 217–31, <https://doi.org/10.1093/ojlr/rwad015>.

application of evidentiary standards may prevent the court from recognising a genuine risk of domestic violence. *Sadd al-ẓarī'ah* operates on the preventive logic of restricting a permissible means when it is reasonably connected to a harmful consequence (*mafsadah*). In Indonesian family law, the doctrine has been identified as a preventive method that can inform the formulation and application of family-law rules where certain legal arrangements may lead to greater harm.⁸⁵ Where domestic violence is sufficiently established, requiring the victim to remain subject to the general procedural period may prolong exposure to harm. Under these circumstances, procedural delay may become a *ẓarī'ah* leading to greater *mafsadah*. The relationship can be formulated as follows. Where domestic violence is established → continued application of the six-month requirement may prolong the victim's exposure to harm → procedural delay may constitute a pathway to greater *mafsadah* → the domestic violence exception operates to block that pathway.

Judicial discretion becomes the mechanism through which the court determines whether this causal relationship exists in the particular case. This discretion is not an arbitrary relaxation of the legal requirement, but a means of ensuring that the general rule does not produce consequences contrary to its protective purpose. This preventive orientation aligns with the broader methodological character of *sadd al-ẓarī'ah*, which places the assessment of potential harm and benefit at the centre of legal reasoning.⁸⁶

This approach is particularly important in cases involving psychological or other forms of domestic violence that are difficult to establish through conventional evidence. Where legally admissible expert testimony, professional assessments, documentary evidence, witness testimony, or other relevant evidence is available, judges may conduct a collective assessment rather than requiring one particular form of evidence as an absolute condition. The pattern does not create a new evidentiary standard. Instead, it recognises that the nature of domestic violence may affect the evidentiary circumstances in which relevant facts can reasonably be established. The difficulty of proving psychological domestic violence has been specifically identified in legal scholarship, reinforcing the importance of appropriate evidentiary assessment when courts evaluate claims of non-physical violence.⁸⁷

⁸⁵ Fajar Rachmadhani, Mualimin Mochammad Sahid, and Muchammad Ichsan, "The Use Of Sadd Al-Dhari'ah On Contemporary Islamic Family Law In Indonesia: Concept And Practice," *Malaysian Journal of Syariah and Law* 12, no. 1 (April 2024): 206–15, <https://doi.org/10.33102/mjssl.vol12no1.505>.

⁸⁶ Misranetti, "Sadd Al-Dzari'ah Sebagai Suatu Hukum Metode Istinbat Hukum Islam," *Jurnal An-Nahl* 7, no. 1 (29 Juni 2020): 51–75, <https://doi.org/10.54576/annahl.v7i1.5>.

⁸⁷ Sage Wilde, Nicola Sheeran, and Heather Douglas, "The Psychological Impact on Mothers Who Have Experienced Domestic Violence When Navigating the Family Court System: A Scoping Review," *Psychiatry, Psychology and Law* 31, no. 4 (July 2024): 764–91, <https://doi.org/10.1080/13218719.2023.2214927>.

At the same time, the proportionality requirement clearly limits judicial discretion. The Palangka Raya decision demonstrates that the preventive principle cannot justify accepting insufficient or unreliable evidence simply because domestic violence is alleged. Protecting victims must be balanced against the parties' rights, evidentiary reliability, and procedural fairness. This balance aligns with the fifth parameter of *sadd al-ẓarī'ah*: preventing greater harm without creating another injustice.

Accordingly, *sadd al-ẓarī'ah* provides doctrinal legitimacy for contextual judicial assessment, but not for unrestricted judicial discretion. It guides judges in evaluating whether applying a general procedural requirement, under the specific circumstances established by the evidence, may produce a greater mafsadah. The judicial decisions examined in this study demonstrate that the preventive function of SEMA No. 3 of 2023 is realised through the interaction between the regulatory exception, evidentiary assessment, and judicial reasoning. The effectiveness of the exception ultimately depends on the ability of judges to protect victims without abandoning the principles of evidentiary reliability and procedural fairness.

4. Conclusion

In conclusion, this study shows that SEMA No. 3 of 2023 provides a preventive exception to the six-month separation requirement in divorce cases involving domestic violence. It is understood through the framework of *sadd al-ẓarī'ah* as an effort to prevent procedural delay from producing greater *mafsadah* for victims. Five parameters were investigated: the existence of *sadd al-ẓarī'ah*, the causal and probable relationship between the means and mafsadah, the nature and gravity of mafsadah, preventive necessity, and proportionality. The results indicate that the general separation requirement may become a pathway to harm when the application prolongs victims' exposure to domestic violence, while the exception functions as a preventive mechanism. Judicial decisions from Situbondo, Palangka Raya, and Probolinggo further demonstrate that the preventive function of SEMA depends on contextual judicial assessment of legally relevant and admissible evidence. Therefore, judicial discretion operates in assessing evidence rather than eliminating the requirement of proof. Based on the results, an immediate amendment to SEMA No. 3 of 2023 is not necessarily required, but its protective function should be strengthened through clearer evidentiary guidance, gender-sensitive judicial reasoning, and appropriate consideration of expert and psychological evidence within the boundaries of procedural law. This study was limited by its normative design and analysis of a small set of judicial decisions. Future studies should examine a broader range of Religious Court decisions and employ socio-legal or empirical approaches to assess how the domestic violence exception is understood and applied across different judicial settings.

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