

Normative Disharmony Regarding the Duration of Marital Conflict in Divorce Law and Its Impact on the Protection of Women

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Abstract

This study aims to analyze the normative disharmony regarding the time limit of disputes and quarrels as grounds for divorce within the Indonesian legal system, specifically between Government Regulation Number 9 of 1975, the Compilation of Islamic Law (KHI), and Supreme Court Circular Letter (SEMA) Number 1 of 2022. The inconsistency among these three regulations gives rise to practical issues in judicial proceedings, particularly in ensuring effective legal protection for women. Both the Government Regulation and the KHI do not stipulate a minimum duration of conflict as a requirement for divorce, whereas the SEMA explicitly requires that the dispute must have lasted for at least six months. This provision potentially obstructs women's access to justice, especially in cases involving unhealthy or violent domestic circumstances. Employing a normative legal research method through statutory and conceptual approaches, this study finds that the time limit regulation in the SEMA is not aligned with the provisions set forth in the Government Regulation and the KHI. The norms within the SEMA are deemed insufficiently responsive to the legal needs of women, thereby necessitating regulatory harmonization to establish a just, adaptive legal system that guarantees equal protection in divorce cases. SEMA Number 1 of 2022 sets a six-month dispute requirement for divorce. This norm restricts judicial discretion and impedes legal protection for women, particularly victims of domestic violence. From a juridical perspective, the SEMA also exceeds its authority by regulating substantive matters without formal legislative processes. Consequently, substantive justice and human rights are at risk of being neglected. An urgent evaluation of this provision is necessary to ensure fair and responsive protection.

Keywords: SEMA No. 1 of 2022, Normative Disharmony, Women's Protection.

Introduction

Divorce is both a social phenomenon and a juridical issue that cannot be avoided within the dynamics of household life. Although, within the context of Islamic teachings, *ṭalāq* (divorce) is permitted as a last resort to resolve marital conflict, its occurrence is nonetheless regarded as a deed greatly disliked by Allah SWT. This is reflected in a hadith of the Prophet Muhammad SAW which states: "*The most hated of the permissible before Allah is divorce*" (Abu Dawud, n.d.). This indicates that, although

ṭalāq holds legal legitimacy under Sharia law, its application must be carried out with careful consideration and accompanied by the intention to avoid greater harm. Islam explicitly encourages efforts of consultation, advice, and reconciliation as primary means to resolve domestic disputes. Divorce may only be pursued when all such efforts have failed and the continuation of the marriage becomes a source of suffering for one or both parties. This principle is also reflected in Indonesia's national legal system, which does not readily provide broad grounds for divorce but instead positions it as a last alternative (*ultimum remedium*) in resolving household disputes (Mun'im, 2022).

Regulations concerning divorce are strictly governed through various legislative instruments, including Law Number 1 of 1974 on Marriage, Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law, as well as the Compilation of Islamic Law (KHI), which serves as the primary reference in cases under the jurisdiction of Religious Courts. Article 19 of Government Regulation Number 9 of 1975 and Article 116 of the KHI explicitly enumerate several grounds upon which a divorce petition may be filed, one of which is when one party abandons the other for two consecutive years without a valid reason. However, these provisions do not explicitly specify a time limit concerning persistent disputes or quarrels, despite such conditions also constituting legitimate grounds for divorce.

Issues arose following the issuance of Supreme Court Circular Letter (SEMA) Number 1 of 2022, which in one of its provisions states that divorce petitions based on prolonged disputes and quarrels may be granted if it is proven that the husband and wife have been living separately for at least six months. This SEMA introduces a new administrative interpretation of the grounds for divorce previously regulated in higher-level legislation. Normatively, SEMA is not a legal product in the form of legislation as defined under Law Number 12 of 2011 on the Formation of Legislation; rather, it is an internal administrative instrument of the Supreme Court intended to provide technical guidance for judges in handling cases. Therefore, hierarchically, the existence of SEMA must not add to, diminish, or contradict the legal norms established in higher-level legislation (Ulandari, 2025).

However, the existence of Supreme Court Circular Letter (SEMA) Number 1 of 2022 has resulted in a normative conflict between the SEMA and Government Regulation Number 9 of 1975 as well as the Compilation of Islamic Law (KHI). This inconsistency lies in the explicit time limit stipulated by the SEMA (i.e., six months), whereas the higher-level regulations do not provide a clear time limitation. Such a discrepancy has the potential to create interpretative ambiguity and legal uncertainty, particularly for justice seekers who rely on normative certainty during divorce proceedings. Within the framework of Hans Kelsen's theory of legal norm hierarchy, the validity of a legal norm must adhere to the general principles governing its

hierarchical status, whereby lower-level norms must neither deviate from nor add substantive content beyond that established by higher-level norms (Paulson, 1996).

Moreover, from the perspective of legal protection for vulnerable groups—particularly women—the imposition of a six-month time requirement under SEMA may give rise to adverse implications. Domestic conflicts, whether psychological or physical in nature, often cannot be expected to meet a predetermined duration in order to qualify as legitimate grounds for divorce. In many instances, women are disproportionately affected—emotionally, socially, and even economically—by prolonged marital disharmony (Al-Shahrani, 2023). Therefore, the six-month limitation imposed by the SEMA risks undermining the principle of substantive legal protection and fails to be responsive to the actual needs of women, particularly in the context of protection against domestic violence or emotional neglect.

This gives rise to a legal issue that requires thorough examination, namely the normative disharmony between Supreme Court Circular Letter (SEMA) Number 1 of 2022 and Government Regulation Number 9 of 1975 as well as the Compilation of Islamic Law (KHI), particularly with regard to the absence of a time limitation in the higher-level regulations and the imposition of a six-month requirement under the SEMA. This inconsistency not only raises normative concerns but also implicates the philosophical and teleological dimensions of law—specifically, the principle that law must function as an instrument of substantive justice, rather than merely formal justice (Rawls, 1971). Accordingly, this study is necessary to comprehensively analyze whether the SEMA is aligned with the foundational principles of legal norm formation, and whether its provisions are capable of providing meaningful and equitable legal protection, particularly for women, who often occupy a vulnerable position in domestic disputes.

A Supreme Court Circular Letter (SEMA) ought not to serve as a substitute for substantive regulation, but rather as an interpretative bridge that remains consistent with prevailing legal norms and aligned with the principles of human rights protection (Nugroho, 2021). Theoretically, the approach employed in this study involves a distinction between *das Sollen* (what ought to be) and *das Sein* (what is). Ideally, a SEMA must not introduce new norms that conflict with or exceed its scope as a technical and procedural guideline (Harahap, 2020). In practice, however, the SEMA has incorporated a time-limit provision not found in either the Government Regulation or the Compilation of Islamic Law, thereby raising concerns regarding potential deviation from the principles of legality and the supremacy of law. Accordingly, the primary focus of this research is to critically examine the normative position of SEMA Number 1 of 2022 in comparison with Government Regulation Number 9 of 1975 and the Compilation of Islamic Law, particularly in the context of ensuring fair requirements for divorce and assessing the extent to which the SEMA is responsive to the need for legal protection for women.

Research Methods

This study employs a normative legal research method, grounded in the statute approach, the doctrinal (legal dogmatic) approach, and analysis of relevant court decisions (Soekanto & Mamudji, 2009). The primary focus lies in the analysis of the construction of legal norms within Indonesia's positive legal system, rather than on empirical social realities. Data were collected through a comprehensive literature review, examining primary legal materials (legislation and jurisprudence), secondary legal materials (legal literature), and tertiary legal materials (legal dictionaries and encyclopedias).

This research is descriptive-analytical in nature, meaning that it systematically outlines the legal issues and critically analyzes their normative substance. The object of study includes the harmonization and normative standing of Supreme Court Circular Letter (SEMA) Number 1 of 2022 in relation to the norms set forth in Government Regulation Number 9 of 1975 and the Compilation of Islamic Law (KHI), particularly concerning the regulation of time limits for the duration of conflict in divorce proceedings. The research aims to present a logical and systematic legal argument, assess the compatibility of such norms with the principles of legality and the hierarchy of laws and regulations, and provide recommendations for the reformulation of norms in pursuit of more equitable legal protection—especially for women involved in divorce cases.

Result and Discussion

Normative Disharmony Concerning the Timeframe of Disputes and Quarrels as Grounds for Divorce in Indonesia

Within the Indonesian legal system, a divorce petition may only be filed on the basis of legitimate grounds as prescribed by applicable laws and regulations. One commonly invoked and legally recognized ground under positive law is the occurrence of continuous disputes and quarrels between husband and wife to the extent that the realization of a harmonious marital life becomes impossible (Zainuddin, 2022). This ground is explicitly stipulated in several legal instruments, including Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law, the Compilation of Islamic Law (KHI), and Supreme Court Circular Letter (SEMA) Number 1 of 2022. However, while these three regulations address the same substantive matter, they employ differing language and normative approaches, particularly with respect to the timeframe of conflict required as a basis for divorce. These discrepancies in terminology and normative construction have resulted in legal disharmony, which not only causes confusion among legal practitioners and judicial authorities, but also adversely affects justice seekers—particularly women, who often find themselves in vulnerable positions in the context of domestic conflict.

Article 19 letter (f) of Government Regulation Number 9 of 1975 stipulates that divorce may be filed if continuous disputes and quarrels occur between the husband and wife, and there is no reasonable prospect of reconciliation. This provision does not specify any particular duration of conflict as a prerequisite for filing for divorce. A similar provision is found in Article 116 letter (f) of the Compilation of Islamic Law (KHI), which states that ongoing disputes and quarrels may constitute grounds for divorce, without mentioning any fixed time period. Both regulations reflect a more open and flexible approach, as they allow judges to assess the specific circumstances of the marital relationship on a case-by-case basis, without being bound by a formal temporal threshold (Risakotta, et al., 2023).

In contrast to the aforementioned regulations, Supreme Court Circular Letter (SEMA) Number 1 of 2022 adopts a more technocratic and administrative approach. In this SEMA, the Supreme Court explicitly states that the ground of continuous disputes and quarrels may be granted as a basis for divorce only if it is proven to have persisted for a minimum duration of six months. While this timeframe offers procedural clarity for judges in adjudicating divorce petitions, it simultaneously gives rise to legal, sociological, and philosophical concerns. From a legal standpoint, the imposition of a six-month requirement by the SEMA constitutes a substantive limitation on a norm that was previously open-ended under the provisions of the Government Regulation and the Compilation of Islamic Law. Hierarchically, however, a SEMA does not constitute legislation (*peraturan perundang-undangan*) as referred to in Articles 7 and 8 of Law Number 12 of 2011 on the Formation of Laws and Regulations (Kejaksaan Tinggi Jambi, 2023). Accordingly, the introduction of a new substantive norm through a SEMA may be deemed as exceeding the authority of the judiciary and potentially contravening the principle of legality (Parikesit, 2021).

Normatively, the function of a Supreme Court Circular Letter (SEMA) is intended to serve as an internal guideline for judges in applying procedural law or interpreting substantive law (Fatah, 2024). However, in practice, SEMA Number 1 of 2022 operates as a substantive reference that restricts judicial discretion in independently assessing legal facts, particularly in divorce cases involving emergency situations such as domestic violence. The imposition of a six-month timeframe as a prerequisite for filing a divorce petition poses the risk of prolonging the suffering of women who are victims of such violence—individuals who, in practice, require prompt legal remedies that are not constrained by formal temporal requirements. This limitation runs counter to the principles of substantive justice, the non-discrimination principle, and the protection of women's human rights as mandated by various national and international legal instruments.

Sociologically, the rigid normative approach adopted in the Supreme Court Circular Letter (SEMA) does not fully align with the social realities of Indonesia's pluralistic society. Many women experiencing domestic violence lack the courage or

sufficient legal access to promptly initiate divorce proceedings. Cultural pressures, economic dependency, and social stigma frequently constitute structural barriers (Kumala & Ananda, 2024; Ikhwan et. al., 2025). Within this context, the imposition of a six-month waiting period may exacerbate the psychological and physical conditions of women, as they are compelled to endure their circumstances until the formal temporal requirement is met before gaining access to judicial relief. Law, therefore, should function as an instrument of protection – not as a barrier to justice.

From the perspective of Islamic law, the principles of protection of life (*ḥifẓ al-nafs*) and protection of dignity (*ḥifẓ al-ʿird*) constitute essential components of the *maqāṣid al-sharīʿah* (the higher objectives of Islamic law), which must be safeguarded in every legal formulation and application (Kamali, 2008; & Al-Suyuthi, n.d.). If a legal norm—including a Supreme Court Circular Letter (SEMA)—has the potential to neglect the rights of women and prolong the suffering of victims of domestic violence, such a norm must be subject to critical review and aligned with the principles of substantive justice. Therefore, a more responsive and gender-just approach is imperative in the formulation and interpretation of legal norms governing divorce.

Systemically, the disharmony between the Government Regulation (PP), the Compilation of Islamic Law (KHI), and the Supreme Court Circular Letter (SEMA) reflects a weakness in coordination among law-making institutions. The substantive differences in regulating grounds for divorce not only create legal uncertainty but also have the potential to result in injustice in judicial decisions. Judges, as the executors of judicial authority, face a dilemma between applying the SEMA as an internal guideline or exercising judicial discretion based on the more open normative provisions outlined in the PP and KHI. When the SEMA is used as the primary reference, the adjudication process may be hindered, thereby impeding the realization of the principles of a swift, simple, and low-cost justice system as mandated by the Law on Judicial Power (Marzuki, 2017).

In order to establish a legal system that is harmonious, adaptive, and just, it is necessary to reformulate the legal norms governing divorce, particularly those concerning the temporal requirements related to disputes and quarrels. The drafting of new regulations or revisions to existing provisions must incorporate perspectives of gender justice and the protection of vulnerable groups. The State's role should not be limited to enacting merely textual and administrative regulations but must ensure that the substantive law effectively addresses actual societal issues. Harmonization of the norms among the Government Regulation (PP), the Compilation of Islamic Law (KHI), and the Supreme Court Circular Letter (SEMA) is an essential prerequisite to prevent law from becoming a source of uncertainty, and instead, to serve as an instrument of justice and the protection of human rights.

The reformulation of laws in divorce matters must be directed towards the attainment of substantive justice, rather than mere compliance with formal

procedures. Laws that prioritize women victims of violence and are not constrained by rigid administrative time requirements reflect the State's commitment to the principles of protection and humanity. Living law is that which is capable of adapting to the social dynamics and real needs of its society (Rahardjo, 2008). Therefore, the harmonization of norms is not only important from a juridical perspective but also constitutes a tangible manifestation of the legal system's commitment to social justice.

Legal Protection and the Welfare of Women in the Provisions of Supreme Court Circular Number 1 of 2022

This study originates from a normative observation that, under Indonesian positive law, one of the recognized grounds for divorce is the continuous dispute and quarrel between husband and wife. This ground is regulated under Article 19(f) of Government Regulation Number 9 of 1975 and Article 116(f) of the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI). Both provisions stipulate that when there is no hope for reconciliation, divorce may be filed. However, these regulations do not specify a minimum duration for such disputes or quarrels, thereby granting judges considerable interpretative discretion in determining whether the condition fulfills the legal requirements for filing for divorce.

Subsequently, the Supreme Court Circular (SEMA) Number 1 of 2022 was issued, resulting in a normative shift in judicial practice. The said Circular stipulates that disputes and quarrels as grounds for filing a divorce petition must have persisted continuously for a minimum duration of six months. Under this provision, conflicts lasting less than six months are deemed not to meet the valid requirements according to the SEMA guidelines, notwithstanding that Government Regulation (PP) and the Compilation of Islamic Law (KHI) do not prescribe any minimum period. This shift has engendered a norm disharmony, as the SEMA, although an administrative instrument or guideline, imposes requirements akin to substantive legal norms.

The principle of legality requires that all binding legal norms must be based on statutory regulations. According to the hierarchy of norms, the Supreme Court Circular (SEMA) ranks below laws and government regulations (Asshiddiqie, 2014). Therefore, new substantive norms that effectively add grounds for divorce without basis in government regulations or laws may be deemed to exceed authority. This approach has been criticized because, although SEMA functions merely as a guideline, in practice, women's rights may be restricted if judges strictly adhere to SEMA, disregarding the urgent circumstances within the household context.

The principle of legal certainty requires that norms be clear, easily accessible, and predictable (Marzuki, 2016). The six-month provision in the Supreme Court Circular (SEMA) enhances procedural certainty but obscures substantive certainty for women who are victims of domestic conflict or violence. This is because not all domestic conflicts are gradual; some are acute and pose immediate danger. If the norm

mandates a waiting period, victims may suffer, and their lives and safety may be threatened without immediate legal protection.

The principle of justice is not only formal—meaning that procedures are conducted in accordance with the law—but also substantive: legal outcomes must be fair within the context of social reality (Rahardjo, 2008). When formal law imposes a strict time requirement, even though the victim is in an emergency situation, substantive justice is eroded. In the gender context, women are often more vulnerable to physical or psychological violence and have less economic access or social support to endure lengthy normal procedures.

Progressive legal theory and gender justice theory emphasize that the law must be responsive to social conditions and the most urgent needs of vulnerable groups. Within this framework, legal norms should not be barriers but facilitators for women victims who require immediate legal protection. If the Supreme Court Circular (SEMA) compels victims to wait six months, such a norm can be deemed contrary to the principles of humanity and human rights (Dewi & Sari, 2022).

From the perspective of legal protection, the existence of the Supreme Court Circular (SEMA) stipulating a six-month time limit potentially gives rise to legal malpractice, in the sense of administrative queuing of victims' fundamental rights. Victims of domestic violence may experience delays in accessing justice, even in cases where threats to safety are imminent. Within the context of international human rights legislation and the protection of women, the State is obligated to provide effective and expeditious mechanisms for recovery and protection (Rahmawati & Nugroho, 2023).

A textual analysis of the Government Regulation (PP) and the Compilation of Islamic Law (KHI) reveals that no specific duration is stipulated as an objective requirement regarding disputes and quarrels. This grants judges discretion to consider concrete facts such as the frequency of disputes, intensity, psychological or physical impact, threats to safety, and potential neglect. Such discretion is grounded in interpretative theory, wherein substantive law is viewed as living and subject to modification or interpretation in accordance with contemporary needs (Rahardjo, 2008).

Meanwhile, the interpretation of the Supreme Court Circular (SEMA) imposing a six-month period may be regarded as the positivization of a new norm, which, although not a statute, is practically enforced as a binding rule. This raises juridical questions regarding the legitimacy of SEMA as an instrument that restricts rights, especially when such a norm has not undergone proper legislative procedures or adequate public deliberation.

In the context of judicial practice, judges face a dilemma: on one hand, the provisions of the Government Regulation (PP) or the Compilation of Islamic Law (KHI) permit the filing of divorce petitions immediately upon the occurrence of serious disputes; on the other hand, SEMA provides a guideline for a waiting period. If judges

choose to adhere strictly to SEMA, victims may lose the opportunity to obtain a faster judicial decision. Conversely, if judges disregard SEMA, there may be an assumption that they have violated the Supreme Court's guidelines, potentially affecting appellate or judicial review decisions.

The social impact of the six-month time norm also warrants thorough analysis. The inability to promptly obtain a divorce decree when conflicts have already endangered safety triggers psychological insecurity, feelings of helplessness, and even disruption to the economic and social life of women. A legal norm that fails to consider concrete conditions and the diversity of social strata will disregard the discriminatory effects on the most vulnerable groups.

As a legal and sociological consequence, the six-month time requirement may function as a form of "minimum formal threshold" that benefits the stronger party in the domestic relationship—often the husband or the party wielding social or economic control—while victims with limited access become disadvantaged. This creates inequality in law enforcement.

The theory of the rule of law and human rights theory demand that legal regulations must not impose discrimination or systemic barriers against fundamental rights (Donnelly, 2013). Should administrative norms or internal guidelines of the Supreme Court obstruct an individual from filing for divorce under circumstances that clearly pose danger, such norms may be considered a violation of the state's obligation to protect human rights, particularly the rights to safety, dignity, and freedom from violence (Candra, 2020).

A normative evaluation must also emphasize that in the formulation of policies and regulations, the participation of vulnerable groups such as women is essential (Kurniawati & Sari, 2021). Was this Supreme Court Circular Letter (SEMA) developed through a consultative process involving women's organizations, family law experts, psychologists, and domestic violence practitioners, so that the norms created truly reflect real needs? If not, such norms lack social and moral legitimacy.

From the perspective of distributive justice theory, legal rules must not only apply equally in a formal sense but also take into account the distribution of burdens and benefits under the law (Rawls, 1999). Women who are victims of domestic conflict bear emotional and physical burdens; if the legal norm imposes an additional burden in the form of a six-month waiting period, then the benefits (protection, liberation from violence) are not distributed equitably.

From the standpoint of the theory of institutional responsibilities, the state and judicial institutions bear an institutional responsibility to ensure that the law does not become an instrument of oppression. There exists a normative obligation that legal norms must not prolong suffering that should be promptly alleviated (Fuller, 1964). The Supreme Court Circular Letter (SEMA) establishing a rigid waiting period may be

regarded as institutionalizing a delay in protection, which necessitates correction through legal or policy mechanisms.

Although Supreme Court Circular Letter (SEMA) No. 1 of 2022 may have been intended to provide procedural certainty, in many cases it effectively restricts the rights of women to obtain timely justice, particularly in emergency situations. Therefore, this norm requires reconsideration to align with the principles of justice, legal certainty, utility, protection of human rights, and the *maqāsid al-Shariah*.

The Supreme Court may consider revising SEMA No. 1 of 2022 to remove or reduce the six-month waiting period requirement in cases involving violence or a real threat to the safety of women. Furthermore, there should be internal guidelines establishing expedited procedural pathways for emergency cases and flexible norms allowing judicial discretion based on concrete facts and the urgency of protection.

Conclusion

The six-month time requirement stipulated in Supreme Court Circular Letter (SEMA) No. 1 of 2022 as a prerequisite for granting divorce petitions based on continuous disputes and quarrels has given rise to significant normative issues within the national legal system. The disharmony between SEMA and Government Regulation No. 9 of 1975 as well as the Compilation of Islamic Law (KHI) reflects a lack of coherence within the hierarchy of legislation, whereby SEMA – which should serve as an internal administrative guideline for judges – contains substantive norms that directly impact access to justice. This temporal restriction clearly risks limiting judicial discretion, impeding legal protection for women who are victims of domestic violence, and contravening the principles of substantive justice, utility, and the protection of human rights, including the principles of non-discrimination and gender equality.

From a juridical perspective, the inclusion of substantive norms in SEMA is also inconsistent with the provisions of Law No. 12 of 2011 concerning the Establishment of Legislation, which requires that every binding norm must be enacted through formal legislative procedures, taking into account the type, hierarchy, and substantive content of the regulation. In practice, the rigid application of SEMA results in substantive legal uncertainty and a potential violation of the *maqāsid al-sharī'ah* principles, particularly with respect to the protection of life and human dignity. Therefore, the existence of the six-month norm must be critically evaluated as a form of legal formalism that has the potential to prolong the suffering of women who are victims in emergency domestic situations.

The Supreme Court, as the highest judicial institution, must promptly undertake an evaluation and revision of Supreme Court Circular Letter (SEMA) No. 1 of 2022 by abolishing the provision requiring a six-month duration as a condition for the validity of divorce grounds based on continuous disputes and quarrels, or at the very least, by creating a clear exception for cases involving domestic violence, severe

neglect, or other emergency conditions. Furthermore, the Supreme Court is advised to develop new technical guidelines grounded in the principles of legal protection for vulnerable groups, particularly women, prioritizing flexible judicial discretion based on concrete factual analysis and the urgency of protection. Such revision should be conducted through a participatory approach involving relevant stakeholders, including women's organizations, legal scholars, and judicial practitioners, to ensure that the substance of the policy is responsive to social needs and not merely administrative in nature. In the long term, the Supreme Court should also reconsider the function and limits of SEMA's authority to prevent its use as an instrument for establishing substantive norms outside the framework of formal legislation, thereby safeguarding the consistency of the normative hierarchy and ensuring the integrity of the national legal system that upholds social justice and human rights.

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