



Islamic Family Law Reform in Indonesia Through Supreme Court Circulars: A *Maqasid Sharia* Perspective

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Abstract

From 2012 to 2022, the Supreme Court of the Republic of Indonesia has issued ten new regulations through Supreme Court Circulars (SEMA) resulting from Plenary Chamber Meetings, which have produced 458 new legal rules. Among these new legal rules, 109 govern Islamic civil law, indicating that SEMAs represent another variation in the efforts to reform Islamic family law in Indonesia. This research aims to examine the existence and efforts of Islamic family law reform in Indonesia from the perspective of *maqasid sharia* according to contemporary scholars. This research uses a mixed-method approach, employing both statutory and conceptual approaches. Primary data sources consist of SEMAs from 2012 to 2022, and secondary data consist of legal regulations related to issues of Islamic family law, which are analyzed. The theory used for data analysis is the theory of *maqasid sharia*. The results of this research show that the reform of Islamic family law regulations in Indonesia through SEMAs from 2012 to 2022 is integrative with *maqasid sharia*. The regulations issued in SEMAs have fulfilled six aspects of *maqasid sharia*, namely: (a) aspects of faith, creed, and monotheism; (b) aspects of human nature and moral improvement; (c) aspects of common sense and legal contextualization; (d) aspects of human rights, freedom, equality, justice, and women's rights; (e) aspects of good order and civilization; (f) aspects of public interest (*maslahah*).

Keywords: Supreme Court Circular, SEMA, Family Law, Maqasid Sharia.

Abstrak

Dari tahun 2012 hingga 2022, Mahkamah Agung Republik Indonesia telah mengeluarkan 10 sepuluh aturan baru melalui Surat Edaran Mahkamah Agung (SEMA) hasil dari Rapat Paripurna Kamar yang menghasilkan 458 aturan hukum baru. Dari semua aturan hukum baru tersebut, terdapat 109 aturan hukum yang mengatur hukum perdata Islam, sehingga dapat dikatakan bahwa SEMA merupakan variasi lain dalam upaya reformasi Hukum Keluarga Islam di Indonesia. Penelitian ini bertujuan untuk mengkaji eksistensi dan upaya reformasi hukum keluarga Islam di Indonesia dari perspektif *maqasid sharia* menurut ulama kontemporer. Penelitian ini menggunakan metode gabungan dan menggunakan pendekatan perundang-undangan serta pendekatan konseptual. Sumber data primer terdiri dari SEMA dari tahun 2012 hingga 2022 dan data sekunder terdiri dari peraturan hukum yang terkait dengan masalah Hukum keluarga Islam yang dianalisis. Teori yang digunakan dalam menganalisis data menggunakan teori *maqasid sharia*. Hasil penelitian ini menunjukkan bahwa reformasi peraturan hukum keluarga Islam di Indonesia melalui SEMA dari tahun 2012 hingga 2022 bersifat integratif dengan *maqasid sharia*. Dalam peraturan yang dikeluarkan dalam SEMA telah memenuhi enam aspek *maqasid sharia*, yaitu: (a) aspek iman, aqidah dan tauhid; (b) aspek fitrah manusia dan perbaikan moral, (c) aspek akal sehat dan kontekstualisasi hukum, (d) aspek hak asasi manusia, kemerdekaan, kesetaraan, keadilan dan hak-hak perempuan, (e) aspek ketertiban dan peradaban yang baik, (f) komponen kepentingan umum (*mashlahah*).

Kata Kunci: Mahkamah Agung, SEMA, Hukum Keluarga, Maqasid Sharia.



Introduction

Public expectations of the supreme court have undergone a shift in value, from the speed of deciding cases to consistency and quality of decisions.¹ This expectation is not unreasonable; the inconsistency of the verdict and the low sense of justice provided by the court through its rulings result in high appeals and cassation legal efforts every year. As a result of these inconsistencies, litigants will continue to test court decisions to the highest court.

One of the progressive efforts of the supreme court to reduce the rate of inconsistency of rulings, ensure legal unity and address legal vacuums is the enactment a chamber system. This system's results are published in the Supreme Court Circular (SEMA). The main purpose of implementing the chamber system is to maintain the unity of the application of law and consistency of rulings. The juridical basis for the chamber system is the Decree of the Chief Justice of the Supreme Court Number 142/KMA/SK/IX/2011 concerning guidelines for the application of the chamber system in the supreme court, which was later revoked and refined by Decree of the Chief Justice of the Supreme Court Number 213/KMA/SK/XII/2014. There are three objectives of implementing the chamber system: maintaining unity in the application of law and consistency of decisions, improving the professionalism of supreme court justices, and speeding up the process of resolving cases.

An annual agenda of the chamber plenary meeting is held as a consequence of the implementation of the chamber system in Indonesia. The chamber plenary meeting aims to fill legal vacancies, maintain legal certainty and unity, ensure consistency of decisions, prevent irregularities, minimize the chances of judicial errors, increase prudence in deciding cases, provide a control mechanism for the chamber chairman in case management, and serve as an accountability mechanism for the panel of judges.²

Since 2012, the religious chamber of the Supreme Court has issued ten SEMAs that regulate formal and material legal provisions. The SEMAs complement the normative provisions of Islamic family law in Indonesia, which previously only referred to the Compilation of Islamic Law (KHI). In 2003, Islamic law was renewed through a Counter Legal Draft (CLD) of the KHI, but due to several sensitive issues, the CLD received little attention and positive response from the Muslim community.

Several central issues in SEMAs are closely related to themes of justice, equality, human rights, and women's and children's rights. These include reasons for divorce in SEMA No. 4 of 2014, No. 3 of 2018, and No. 1 of 2022; rules on judicial review in divorce cases in SEMA No. 7 of 2012 and No. 1 of 2017; and rules on joint property, including the only house lived in by children, in SEMA No. 1 of 2022. Additionally, *mut'ah*, *iddah*, child support, and *madliyah* income are regulated in SEMA No. 3 of 2018, No. 1 of 2017, and No. 2 of 2019, while child custody (*hadhanah*) and child support are regulated in SEMA No. 1 of 2017 and No. 5 of 2021.

¹ Ade Rizky Fahreza, "Meluruskan Pemahaman Konsistensi Putusan untuk Mencapai Kesatuan Hukum," *LeIP* (blog), 30 Januari 2017, <https://leip.or.id/meluruskan-pemahaman-konsistensi-putusan-untuk-mencapai-kesatuan-hukum/>.

² Amran Suadi, "Evaluasi Implementasi Hasil Pleno Kamar Mahkamah Agung RI Dalam Rangka Mewujudkan Kepastian dan Kesatuan Hukum di Lingkungan Peradilan Agama," dalam *Direktoran Jenderal Peradilan Agama MARI* (Bimbingan Teknis Peningkatan Kompetensi Tenaga Teknis di Lingkungan Peradilan Agama, Mahkamah Agung Republik Indonesia, 2024).

Relevant previous studies include research by Ilham Tohari and Moh. Anas Kholis³, who concluded that a maqashid-based ijihad approach could conceptually serve as an epistemological basis for family law reform in Indonesia. They believe that the reform of Islamic family law should originate from Islamic thought traditions rather than external perspectives. Ibrahim Munid⁴ study reviewed SEMA Number 3 of 2018 concerning isbat marriage of polygamy and compared it with the circular letter from the Ministry of Home Affairs and the Director General of Dukcapil. Munid concluded that both circulars serve their own legal objectives: the Supreme Court prioritizes legal certainty to reduce polygamous marriage isbats, while the Ministry of Home Affairs focuses on practical benefits for people in remote areas or those bound by customary rules.

Further research by M. Yogie Hidayatullah and Ahsin Dinal Mustafa⁵, showed that post-divorce child support is a parental obligation, with amounts adjusted to the father's ability and the child's needs. Their findings align with theories of justice as primacy and equality but not with Gustav Radbruch's theory of justice according to positive law. Ahmad Taufik Riadi and Murjani⁶ investigated the fulfillment of iddah rights in talaq and divorce cases, identifying several judicial practices to ensure these rights, including ex-officio verdicts, delaying talaq pledges, and withholding divorce certificates until obligations are met.

Based on these studies, there is a lack of analysis of legal material in SEMA from the perspective of maqasid sharia. Given the significant issuance of SEMAs from 2012 to 2022, addressing the basic needs of Muslims in Indonesia, this research aims to assess whether these SEMAs align with or contradict the values in maqasid sharia. This paper seeks to explore the existence and efforts of Islamic family law reform in Indonesia from the perspective of contemporary scholars' maqasid sharia theory, to be discussed in detail in the subsequent sub-chapter.

Method

This research is a qualitative study utilizing both a statutory and a conceptual approach. The primary data consists of Supreme Court Circulars (SEMA) from 2012 to 2022, comprising a total of ten letters, within which 458 new legal rules were issued. The secondary data includes Law Number 1 of 1974 concerning Marriage, Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, and Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). All data were collected through the legal documentation and information network of the Supreme Court of the Republic of Indonesia, accessed online. This research is a library study that relies exclusively on ready-to-use data,

³ Institut Agama Islam Negeri Kediri dkk., "Maqasid Syariah Sebagai Pijakan Konseptual Dalam Pembaruan Hukum Keluarga Islam Indonesia," *Arena Hukum* 13, no. 02 (31 Agustus 2020): 314–28, <https://doi.org/10.21776/ub.arenahukum.2020.01302.7>.

⁴ Ibrahim Munib, "Isbat Nikah Poligami Dan Kawin Belum Tercatat Pada Kartu Keluarga Perspektif Tujuan Hukum Gustav Radbruch," *Jurisy: Jurnal Ilmiah Syariah* 4, no. 2 (September 2023): 59–74.

⁵ Muhammad Yogie Hidayatullah dan Ahsin Dinal Mustafa, "Penambahan Nafkah Anak Pasca Perceraian Perspektif Teori Keadilan Gustav Radbruch," *Sakina: Journal of Family Studies* 8, no. 1 (1 Maret 2024): 48–63, <https://doi.org/10.18860/jfs.v8i1.6482>.

⁶ Ahmad Taufik Riadi, "Nafkah Iddah Dalam Perkara Perceraian Di Pengadilan Agama Samarinda Perspektif," *Mitsaq: Islamic Family Lay Journal* 1, no. 2 (Juli 2023): 126–46.

utilizing content analysis techniques for data processing. The collected data were analyzed using the maqashid sharia theory of contemporary ulama.

Islamic family law reform in Indonesia

In general, family law can be understood as rules governing family relations, where the relationship can occur as a result of blood relations or because of marriage.⁷ The relationship due to blood kinship is commonly called blood kinship, namely people who have the same ancestor, and the relationship due to marriage events is called marital kinship.

Then the primary sources of Islamic family law are the Qur'an and hadith, both of which are the main rules in Islamic law which then understanding and practice are contextually realized which results in fiqh, fatwas, and laws and regulations (*qanun*). As for fiqh which discusses marriage with all its legal consequences, it is usually codified in the book of *fiqh munakahat*.

As the author explained above, that Indonesia is a unitary state with the largest number of adherents of Islam in the world⁸, but the country's constitution (in the 1945 constitution) does not call Indonesia an Islamic state, but strengthens the position of the state that accommodates and recognizes the authority of religions in its positive law. This form of recognition is seen in the process of national legal legislation, which produces positive laws with family law material among which can be found in the Marriage Law and the Compilation of Islamic Law. The KHI is a guideline and reference for Muslims formulated by scholars (fiqh) that has been adapted to the context and conditions of Indonesia.⁹

In this context, the renewal of Islamic family law can be seen in 4 four scopes, namely:

1. Jurisprudence

Jurisprudence is the most systematic and detailed manifestation of Islamic law, which in general can include 4 four fields, namely: the field of worship (the relationship between humans and God), the field of *munakahat* (relations between humans within the scope of the family), the field of *muamalah* (relations between humans in social society), and the field of *jinayah* (the scope of security and public order).

In Indonesia, jurisprudence as a product of Islamic legal thought is very close to the characteristics of Arab personality which is the result of an intellectual network of Islamic scholars in Indonesia who are Arab-oriented, while this condition lasted until the early 20th century. This condition gave birth to criticism of some parts of fiqh which were considered incompatible with the sense of awareness and personality of the Indonesian Islamic community, this led to the lack of warm welcome of the Indonesian people to fiqh.¹⁰

The renewal of Islamic family law can be seen in the codification of Indonesian fiqh which is summarized in the KHI based on Presidential Instruction (Inpres) Number 1 of 1991, which is currently the primary guideline in the field of Islamic family material law. The KHI component consists of three Book Chapters, namely: Marriage, Inheritance, and Wakaf. The total consists of 229 Articles, of which 170 articles discuss the law of marriage.

From a historical aspect, the emergence of KHI is a response to the disparity in decisions of Religious Court judges on family law issues, which reached a peak that was quite troubling

⁷ Eko Setiawan, "Dinamika Pembaharuan Hukum Keluarga di Indonesia," *de Jure: Jurnal Syariah dan Hukum* 6 (Desember 2014): 140.

⁸ Achmad Syafrizal, "Sejarah Islam Nusantara," *Islamuna* 2, no. 2 (Desember 2015): 235–53.

⁹ A. Intan Cahyani, "Pembaharuan Hukum dalam Kompilasi Hukum Islam," *Al-daulah* 5, no. 2 (Desember 2016): 310–13.

¹⁰ Hasbi Ash-shiddiqy, *Syari'at Islam Menjawab Tantangan Zaman* (Jakarta: Bulan Bintang, 1966).

in society. Although diversity is a logical consequence of multi-views and perspectives on fiqh, the impetus for the creation of uniformity of material law is more strongly voiced, resulting in the creation of Indonesian scholars, statesmen and scholars in the form of the Compilation of Islamic Law.

Although in his time KHI can be said to be the material for the renewal of Islamic family law in Indonesia, but in the course of it the impetus for legal reform of KHI finally occurred as well. In 2003 the PUG Working Group Team of the Ministry of Religious Affairs offered a Counter Legal Draft (CLD) on the KHI. CLD is the result of research based on the basic principles of Islamic teachings from a human rights perspective, advocacy for equality and gender justice in relations between men and women, campaigns against humanist, pluralist, and democratic views.¹¹

2. Fatwa

Fatwas are the result of a mufti's ijtihad on a legal issue raised against him. The characteristics of fatwas are casuistic (i.e. response to answers submitted by the ummah to the ulama), also have no binding and coercive power, dynamic, and do not oblige those who ask questions to follow the fatwa.¹²

The renewal of Islamic law through fatwas is usually carried out by Islamic community organizations (ormas) in Indonesia such as Nahdhatul Ulama through Lajnah Bahtsul Masail and Muhammadiyah through Majelis Tarjih.¹³ In addition to these two Islamic organizations, the most popular for Muslims in Indonesia are fatwas issued by the Fatwa Commission of the Indonesian Ulema Council.

3. Judge's Verdict

In the context of reforming Islamic family law, the judge's decision referred to here is the decision of a religious court judge. The reform of Islamic law through court decisions is considered very necessary and good, because it integratively describes justice that grows and develops in society. Because usually, religious court decisions are based on legal arguments or legal considerations that are adjusted to Islamic values and socio-social developments that continue to move.

The findings by the judge in practice in religious courts start from the stage of formulating problems over disputes that occur between the plaintiff and the defendant starting from the reading of the lawsuit, the answer by the defendant, then replica and duplex (read: *jawab-jinawab*). The next stage is the burden of proof on the propositions presented in the jinawab answer process, which produces legal facts and then confirms these facts into the legal normative laws and regulations. The result of these considerations is set forth in the form of a verdict.¹⁴

From this it can be seen that the role of religious court judges in the application of Islamic law is a tool to maintain harmony between legal components in society. This requires the

¹¹ Siti Musdah Mulia, "Menuju Hukum Perkawinan yang Adil," dalam *Perempuan & Hukum: Menuju Hukum yang Berspektif Kesetaraan dan Keadilan* (Jakarta: Yayasan Obor Indonesia, 2006).

¹² M. Atho Mudzhar, *Fatwa-Fataw Majelis Ulama* (Jakarta: INIS, 1993).

¹³ Mulyono Jamal, "Metodologi Istinbath Muhammadiyah dan NU: Kajian Perbandingan Majelis Tarjih dan Lajnah Bahtsul Masail," *Ijtihad: Jurnal Hukum dan Ekonomi Islam* 7, no. 2 (2013): 183–202.

¹⁴ Abdul Manan, "Penemuan Hukum oleh Hakim dalam Praktek Hukum Acara di Peradilan Agama," *Jurnal Hukum dan Peradilan* 2, no. 2 (Juli 2013): 189–202.

ability of judges to integrate legal instruments and legal awareness to create certainty of law and order in the wider community.¹⁵

4. Laws and Regulations

Furthermore, the renewal of Islamic law can be seen in the collection of laws and regulations and derivative rules which in the main substance of the material remain integrated with the values of universality of Islamic law. As contained in Law Number 1 of 1974 concerning marriage which was later amended in Law Number 16 of 2019 and Presidential Instruction (Inpres) Number 1 of 1991 concerning the Dissemination of the KHI. These two rules can be said to be material Islamic family law that is made into national positive law, which is doctrinally religious binding on Muslims, and more broadly binding on all citizens.

Perspective on the Indonesian context, of course, there are several family law materials in positive legal regulations that are different from jurisprudence, such as marriage registration, marriage age restrictions, tightened polygamy, heirs and mandatory wills. However, it should be seen as part of the ongoing efforts made to reform Islamic family law in Indonesia.¹⁶

In addition to the regulations mentioned above, the renewal of Islamic family law can also be seen in the SEMA which is a policy rule (*beleidregel*) for the implementation of legal unity by the head of the supreme court. *Beleidregel* can be interpreted as a quasi-legislation, that is, a regulation whose enforceability is not comprehensive (as in *regeling*, which is a regulation that contains binding legal norms in general). In this paper, the author will focus on the analysis of Islamic family law reform contained in SEMA from 2012 to 2022.

Various methods of family law reform in Indonesia

It has been explained by the author above, that reforms to the law generally offer a new methodology and are different from existing laws. His legal paradigm is built on the contextualization of revelation to problems that occur in society. The integration of the text of revelation with the shifting social values of society is not only understood through literal interpretation, but also through interpretation of the principle and value of the universality of revelation. Al-Fitri divides the method of renewal into two forms, namely: conventional methods and contemporary concepts.¹⁷

In the conventional method, there are characteristics of the application of law when *ijtihad*, namely using a parcial approach, not giving a research position to historical studies, too focused on text studies, too influenced by local traditions and cultures such as superstition, *bid'ah*, and *kufarat*, and finally there is political intervention in it.

Then in the contemporary method, in general using one of the following four theories:

1. *Takhayyur*, using the thoughts of certain fiqh scholars.
2. *Talfiq*, doing collaboration/combination of several thoughts of fiqh scholars.
3. *Takhshish al-Qadla*, the limitation of authority by the state to judicial authority (absolute authority and relative authority).

¹⁵ Nur Aisyah, "Peranan Hakim Pengadilan Agama dalam Penerapan Hukum Islam di Indonesia," *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam* 5, no. 1 (Juni 2018): 73–92.

¹⁶ Holan Riadi, "Pembaharuan Hukum Keluarga Islam di Indonesia (Ditinjau dalam Undang-Undang No. 1 Tahun 1974)," *Scholastica: Jurnal Pendidikan dan Kebudayaan* 3, no. 1 (Mei 2021): 24–35.

¹⁷ Al Fitri, "Pembaharuan Hukum Keluarga di Indonesia Melalui Kompilasi Hukum Islam," *Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung Republik Indonesia* (blog), Oktober 2019, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/pembaharuan-hukum-keluarga-di-indonesia-melalui-kompilasi-hukum-islam-oleh-al-fitri-s-ag-s-h-m-h-i-16-10>.

4. *Siyasah Syar'iyah*, the enactment of the rule of law that the state considers beneficial and just for its people, by not contradicting sharia, through the process of reinterpreting nash against nash.

In addition to the two methods above, there are also several other methods of reforming Islamic law¹⁸, such as:

1. Intra-doctrinal reform, where reform is based on the views of one school of Islamic law believed by the majority of the population of a community. As in Indonesia where the majority of Muslims adhere to Islam from Fiqh Syafi'i.
2. Extra-doctrinal Reform, which is a reform based on the rule of law that occurs in other schools/ schools, but is considered suitable and valuable for benefit and justice if applied in a community.
3. Regulatory Reform, namely reforms carried out through the formalization/ legislation approach of sharia into the state legal order, such as the issuance of Perma on Sharia Economic Law, and SEMA, etc.
4. Codification, which is a renewal carried out through the mechanism of codification/ compilation of legal material thematically, as in the implementation of the KHI in Indonesia.

Realizing Islamic family law with the perspective of maqasid sharia contemporary ulama

The culmination of the development of maqasid sharia studies that occurred in the era of Imam al-Shatibi can be said to be the beginning of classical or traditional maqasid sharia.¹⁹ Furthermore, entering the early 20th century AD until now, there have emerged many scholars, scholars, and academics who developed the theory of maqasid sharia progressively and massively. The criticisms directed at the classical maqasid theory, which is also the reason for the renewal, include the following:

1. The reach of classical maqasid sharia covers all Islamic law, but does not yet include the specific intent of a group of nash or laws covering a particular topic of fiqh.
2. The classical maqasid sharia approach is closer to the interests of the individual, rather than to society, the family, and people in general.
3. It has not incorporated the principles of justice and freedom.
4. The study of classical maqasid sharia is deduced from literatul fiqh studies, rather than the main sources of sharia.²⁰

The result of this criticism, resulted in a new view of maqashid ash-shari'ah as summarized below:

Table 1. Contributions of contemporary scholars in study of maqasid sharia

No.	Ulama	His Contributions to Maqashid Studies
1	Rashid Rida (d. 1354 H / 1935 A.D.)	Advocating that the main objectives of the sharia are: <ul style="list-style-type: none"> - Reformation of the pillars of faith - Socializing Islam as a natural religion - Uphold the role of reason, knowledge, wisdom, and sound logic

¹⁸ Fathul Mu'in, "Pembaharuan Hukum Keluarga Islam di Indonesia dalam Peningkatan Status Perempuan," *Legal Studies Journal* 2, no. 1 (2022): 16–18.

¹⁹ Zaprul Khan, *Rekonstruksi Paradigma Maqashid asy-Syari'ah* (Yogyakarta: IRCiSoD, 2020).

²⁰ Jaser Auda, *Membumikan Hukum Islam melalui Maqasid Syariah* (Bandung: Mizan, 2015).

		<ul style="list-style-type: none"> - Freedom - Independence - Social, political, and economic reforms, and - Women's rights
2	Al-Tahir ibn 'Assyria (d. 1325 AH/ 1907 AD)	<p>Suggesting the main universal objectives of Islamic law are:</p> <ul style="list-style-type: none"> - Order - Equality - Freedom - Convenience, and - Preservation of Human Nature
3	Muhammad al-Ghazali (d. 1416 H/ 1996 A.D.)	Criticize literal/textual interpretation tendencies, and Reformist opinions in the field of human rights and women's rights.
4	Yusuf al-Qaradawi (d. 1444 H/ 2022 AD)	<p>Propose that the subject matter of the Shari'a become:</p> <ul style="list-style-type: none"> - Preservation of creed and self-esteem - Worship of Allah SWT - Soul Purification - Moral Improvement - Good family building - Treating women fairly - The development of a strong Muslim nation, and - Cooperation between mankind.
5	Taha Jabir al-'Alwani (d. 2016 AD)	<p>Study the Qur'an to identify three al-mashlahahs, namely:</p> <ul style="list-style-type: none"> - Knowing Allah or monotheism - Developing oneself in a holy manner or tazkiyah - Developing civilization on earth or imran
6	Mohammad Hashim Kamali	<p>Identify the components forming rahmah, namely:</p> <ul style="list-style-type: none"> - Educating individuals (<i>tahdzib al-fardh</i>) - Justice - Consideration of public interest (<i>mashlahah</i>) - Removing misery (<i>raf' al-haraj</i>) - Protection of rights and freedoms, economic development, research and development of technology and science, and peaceful coexistence between nations into the structure of maqashid.

The six contemporary scholars above, have made positive contributions to the study of maqasid sharia without including claims to truth to their respective contributions. All efforts in research and studies carried out actually boil down to a sense of justice, expediency, and legal certainty that will be felt by Muslims in particular, and the global community in general. In this position, the author will try to summarize and elaborate the objectives of similar sharia as a result of the contributions of contemporary scholars above. Then, the components of the purpose of the sharia will be used as a measurement tool for legal analysis of the material contained in the Supreme Court Circular (SEMA). Here are the components of the objectives of the Sharia perspective of contemporary scholars:

Table 2. Components of the purpose of sharia perspectives of contemporary scholars

No.	Components with the same Theme	Mention of the Purpose of Sharia
1	From Rashid Rida: <ul style="list-style-type: none"> - Reformation of the pillars of faith By Yusuf al-Qardhawi <ul style="list-style-type: none"> - Preservation of creed and self-esteem - Worship of Allah SWT By Taha Jabir al-'Alwani <ul style="list-style-type: none"> - Knowing Allah or monotheism 	Component 1: Faith, Aqidah, Tawhid
2	By Rashid Rida <ul style="list-style-type: none"> - Socializing Islam as a natural religion From Al-Tahir ibn 'Assyria <ul style="list-style-type: none"> - Preservation of Human Nature By Taha Jabir al-'Alwani <ul style="list-style-type: none"> - Developing oneself in a holy manner or tazkiyah By Yusuf al-Qardhawi <ul style="list-style-type: none"> - Soul Purification - Moral Improvement 	Component 2: Human Nature, Moral Improvement
3	By Rashid Rida <ul style="list-style-type: none"> - Uphold the role of reason, knowledge, wisdom, and sound logic By Muhammad al-Ghazali <ul style="list-style-type: none"> - Criticize literal/textual interpretive tendencies, and By Mohammad Hashim Kamali <ul style="list-style-type: none"> - Educating individuals (tahdzib al-fardh) 	Component 3: Common sense, legal contextualization
4	By Rashid Rida <ul style="list-style-type: none"> - Freedom - Independence - Social, political, and economic reforms, and - Women's rights From Al-Tahir ibn 'Assyria <ul style="list-style-type: none"> - Equality - Freedom - Ease By Muhammad al-Ghazali <ul style="list-style-type: none"> - Reformist opinion in the field of human rights and women's rights. By Yusuf al-Qardhawi <ul style="list-style-type: none"> - Treating women fairly - The development of a strong Muslim nation, and - Cooperation between mankind. By Mohammad Hashim Kamali <ul style="list-style-type: none"> - Justice - Removing misery (raf'al-haraj) - Protection of rights and freedoms, economic development, research and development of technology and science, and peaceful coexistence between nations into the structure of maqashid. 	Component 4: Human Rights, Independence, Equality, Justice, and Women's Rights
5	From Al-Tahir ibn 'Assyria <ul style="list-style-type: none"> - Order 	Component 5: Good order and civilization

	By Yusuf al-Qardhawi - Good family building By Taha Jabir al-'Alwani - Developing civilization on earth or imran	
6	By Mohammad Hashim Kamali - Consideration of public interest (mashlahah)	Component 6: Public interest (mashlahah)

From the table above, the results of the elaboration and merging of several components of the objectives of sharia as a result of contributions to contemporary scholars, the author gets six components of the goals of universal Islamic law, namely: *First*, the components of faith, aqidah, and tawhid. *Second*, the components of human nature and moral improvement. *Third*, the common sense component in the effort to contextualize the law. *Fourth*, components of Human Rights (HAM), Independence, Equality, Justice, and Women's Rights. *Fifth*, the components of order and good civilization. *Sixth*, the public interest competency (*mashlahah*).

The six components will be used as an analytical tools in assessing whether the material law resulting from the Chamber Plenary Meeting at the Supreme Court contained in the Supreme Court Circular (SEMA) has fulfilled the main elements of the universal purpose of maqasid sharia.

Family law reform in SEMA from 2012 to 2022 and its analysis maqasid sharia perspective

From 2012 to 2022, the Supreme Court issued ten SEMAs relating to Islamic family law. The ten SEMAs are: SEMA Number 7 of 2012, SEMA Number 5 of 2014, SEMA Number 3 of 2015, SEMA Number 4 of 2016, SEMA Number 1 of 2017, SEMA Number 3 of 2018, SEMA Number 2 of 2019, SEMA Number 10 of 2020, SEMA Number 5 of 2021, and SEMA Number 1 of 2022. In this case, the Supreme Court can be considered very productive, as it has issued ten SEMAs over a span of ten years. This activity highlights the Supreme Court's serious commitment to reducing disparities in rulings, also known as efforts to achieve legal unity and fill legal vacuums.

The author has conducted a calculation, revealing that these ten SEMAs have resulted in 458 new legal formulations. Among these, there are 109 new legal formulations in the field of civil religion, while the remaining 349 legal formulations regulate laws in the fields of Administrative Law (TUN), Military, Criminal, and General Civil law. Of the 109 new legal formulations in the civil religious field, if classified into several groups, they can be divided into nine categories, namely: Procedural Law, Marriage, Child Probation, Divorce, Inheritance, Grants, Sharia Economics, Jinayat, and Hisab Rukyat. These will be described in detail in the following table:

Table 3. Number of new legal rules in SEMA

No	Issue Groups	Number of Legal Rules
1	Procedural Law	30
2	Marriage	12
3	Child Attestation	1
4	Divorce	32
5	Inheritance	13
6	Grant	3
7	Sharia Economics	8
8	Jinayat	9
9	Hisab Rukyat	1

In order for this research to be more specific to one case, the author will conduct an analysis of divorce law legal material and will be more detailed on issues related to the theme of justice, equality, and women's and children's rights. For this reason, the object of study will be centered on legal material that regulates the reasons for divorce, review of divorce cases, objects of common property the only house lived in by children, about mut'ah, iddah bread, child support, and madliyah bread, and finally on custody rights (*hadhanah*).

Reasons for divorce

Here are the new legal rules on reasons for divorce:

Table 4. New legal rules on reasons for divorce

Theme	Regulation	Legal Rules
Broken Marriage Indicator	SEMA Number 4 of 2014	A divorce lawsuit can be granted if the facts show that the household has broken (broken marriage) with indicators including: <ol style="list-style-type: none"> a. There have been attempts at peace but to no avail b. There is already no good communication between husband and wife c. One of the parties or each party abandons its obligations as husband and wife d. There has been a separate bed / shared residence e. Other things found in the trial (such as the presence of WIL, PIL, Domestic Violence, gambling, etc.)
Conditions for Divorce Granted	SEMA Number 3 of 2018	Judges should consider adequately and carefully in adjudicating divorce cases, because divorce will end the sacred institution of marriage, change the legal status from halal to haram, have a broad impact on the structure of society and concern the accountability of the afterlife, therefore divorce can only be granted if the marriage has broken (broken marriage) with indicators that have been clearly proven.
Reasons for granting divorce	SEMA Number 1 of 2022	In an effort to maintain a marriage and fulfill the principle of making divorce difficult, then: <p>Divorce cases on the grounds that the husband / wife does not carry out the obligation of birth and / or mental support, can only be granted if it is proven that the husband / wife has not carried out his obligations after at least 12 (twelve) months; or</p> <p>Divorce cases on the grounds of continuous disputes and quarrels can be granted if it is proven that the husband / wife has disputes and quarrels continuously or has been separated from residence for at least 6 (six) months.</p>

The table above shows that there are three new legal rules governing the reasons for divorce. The three rules were published sequentially from 2014, 2018, and 2022.

These legal rules complement normative rules with similar themes found in Article 116 of the KHI on the reasons for divorce, while affirming the application of the principle of complicating divorce. In line with research conducted by Dedi Sumanto, et al who concluded that the Religious Court has played an active role in implementing the law in handling divorce cases for reasons of domestic violence by applying the provisions of Article 39 paragraph 1 and paragraph 2 and the reasons for divorce in Article 19 of Government Regulation Number 9 of 1975.²¹

When viewed from the six components of the purpose of deriving from sharia, as the author has described above, there are three components that integratively have one goal in common with the rules in SEMA, including: (a) components of human nature and improvement, where divorce is an effort to repair an injured marriage. Human nature that tends to goodness and improvement certainly has implications for the continued presence of divorce cases in the household, (b) components of good order and civilization, the additional rules in SEMA certainly emphasize the basic position of complicating divorce so that each couple does not easily take the option of separation but must continue to strive to improve the household seriously for the creation of a good human civilization in the future, and the last (c) public interest component (*maslahah*), because when viewed macro the consequences of divorce certainly have a negative impact on the progress of a nation. For this reason, SEMA is here to complement family law in the KHI in its commitment to complicate divorce.

Therefore, the rules on the reasons for divorce in SEMA have fulfilled 3 (three) components of the 6 (six) components of the objectives of sharia from the maqashid perspective of shari'ah contemporary scholars.

Review of divorce cases

Here are the new legal rules regarding Divorce Case Review:

Table 5. New legal rules on review of divorce cases

Theme	Regulation	Legal Rules
Judicial Review after the Pledge of Talaq	SEMA Number 7 of 2012	Divorce cases that have pledged talaq and have obtained divorce if submitted for judicial review must in principle be decided by refusing judicial review, unless there is a manifest error committed by the judge in granting permission to pledge talaq.
Obligations of the Complainant's Court	SEMA Number 1 of 2017	The Filing Court must attach a photocopy of a valid divorce certificate in the case file of the application for judicial review (Peninjauan Kembali/PK) in the event that the divorce certificate has been issued.

The table above explains that there are two new legal rules governing judicial review in divorce cases, namely rules issued sequentially in 2012 and 2017.

²¹ Dedi Sumanto, Titin Samsudin, dan Fikri Hi. Asnawi Amirudin, "The Existence of the Religious Court in Handling Divorce Cases on the Reason of Domestic Violence," *Jambura Law Review* 3, no. 2 (27 Juli 2021): 214–30, <https://doi.org/10.33756/jlr.v3i2.11651>.

This rule regulates special provisions for efforts to review divorce cases, which have not previously been regulated in civil procedural law or other regulations. SEMA sees that there is a problem in society, where if one of the couples who has been broken up divorced and has remarried to his new partner, and extraordinary legal remedies (read *tabel 5*) are made, it will potentially eliminate the rights of couples who have been divorced from their new partners, besides that it will also cause legal uncertainty for the new marriage bond with their new partner.

These provisions are certainly closely related to the components of (a) human nature and moral improvement, (b) common sense and legal contextualization, (c) human rights, independence, equality, justice, and women's rights, and (d) good order and civilization.

Therefore, the rules on judicial review in divorce cases in SEMA have fulfilled four components of the six components of the objectives of sharia from the maqasid perspective of contemporary scholars.

Objects of common property the only house lived by children

Here are the new legal rules regarding the object of common property in the only house where children live:

Table 6. New legal rules on common property objects: the only home in which children live

Theme	Regulation	Legal Rules
The object of the common property is the only house in which the child lives	SEMA Number 1 of 2022	To ensure the realization of the principle of best interest for the child in the case of joint property whose object is proven to be the only house where the child lives, the suit can be granted but the division is carried out after the child is an adult (21 years old) or married.

The table above shows that there are new legal rules for objects of joint property that are disputed after divorce, where if the object is in the form of a house and is currently still left by the child, then the division can only be done after the child is an adult. The purpose of the rule is to ensure the best interests of the child, so that the child does not become a victim of the divorce of both parents.

This rule complements the normative rules regarding marital property contained in Articles 85-97 of the KHI, where previously there was no time for the distribution of joint property after divorce if one of the objects was still the basic needs of children resulting from the marriage. This is in line with research conducted by Philipp M Lersch²² which concluded that parental separation when the child is not yet an adult coupled with the division of property (when the child is not yet an adult) will affect the child's wealth in adulthood due to the decline in the quality of children's education after the divorce of both parents. However, to complete this new rule for the future, it is necessary to improve the time limit for the age of adulthood of children and the power of SEMA in the hierarchy of laws and regulations so as to force every Judge to submit and comply with the rule.²³

²² Philipp M Lersch dan Janeen Baxter, "Parental Separation during Childhood and Adult Children's Wealth," *Social Forces* 99, no. 3 (1 Maret 2021): 1176–1208, <https://doi.org/10.1093/sf/soaa021>.

²³ Kukul Pramono Budi, Ghansham Anand, dan Shintya Yulfa Septiningrum, "Adjudicating Joint Property Dispute In Islamic Jurisprudence: Balancing The Best Interests Of The Child With A Focus On Residency," *Syariah: Jurnal Hukum dan Pemikiran* 23, no. 2 (Desember 2023): 246–66, <https://doi.org/10.18592/sjhp.v23i2.12304>.

If philosophical integration is drawn from the application of these legal rules, then the rules in SEMA above are integrated into the components of (a) common sense, legal contextualization, (b) human rights, justice, and (c) good order and civilization. SEMA rules regarding the object of common property lived by the child have fulfilled three components of the six components of the objectives of sharia from the maqasid perspective of contemporary scholars.

Mut'ah, iddah bread, child bread, and madliyah livelihood

Here are the new legal rules regarding Mut'ah, Iddah Bread, Child Bread, and Madliyah Bread:

Table 7. New law rules on mut'ah, iddah bread, child support, and madliyah livelihood

Theme	Regulation	Legal Rules
Determination of the amount of mut'ah, iddah bread, and child support	SEMA No. 3 of 2018 refinement of No. 7 of 2012	The judge in determining the income of madhiyah, iddah bread, mut'ah and child support, must consider the sense of justice and propriety by exploring the facts of the husband's economic ability and the facts of the basic needs of life of the wife and / or children.
Husband's obligations due to divorce towards wives who are not nusyuz	SEMA Number 3 of 2018	Accommodating Perma Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Against the Law, wives in divorce cases can be given mut'ah and iddah as long as it is not proven to be nusyuz.
Amar the verdict of the divorce case on the burden of divorce	SEMA Number 1 of 2017	In the framework of implementing Perma No. 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Against the Law to provide legal protection for women's rights after divorce, the payment of obligations due to divorce, especially iddah, mut'ah and madliyah bread, can be included in the judgment with the sentence paid before the pronouncement of the talaq pledge. The pledge of talaq can be carried out if the wife has no objection to the husband not paying the obligation at that time. (This provision amends letter C number 12, SEMA No. 3 of 2015, in casu nafkah iddah, mut'ah and nafkah madliyah)
Amar the decision of the divorce case about the burden of divorce	SEMA Number 2 of 2019	In order to implement Perma Number 3 of 2017 concerning Guidelines for Prosecuting Women Facing the Law to provide legal protection for women's rights after divorce, the payment of the husband's obligations to the wife after divorce in the case of Divorce can add the following sentence: "... which was paid before the Defendant took the divorce certificate", provided that the amar is narrated in the posita and petitum of the suit.

The table above shows that there are four new legal rules governing women's rights after divorce. Where this has actually become the demand of academics in previous studies that have been done. Women's rights are a major and sensitive issue, being used to criticize KHI as a source of mainstream law today. Then through SEMA, the state has positioned itself as the protector of women's rights to justice and equal access to the law.

The provisions in SEMA above complement the normative rules regarding the consequences of marriage breakup contained in Articles 149 – 152 KHI. The rules in SEMA assert that women can claim their rights after divorce if it is not proven nusyuz, also protecting the man (husband) from the wife's demand for iddah/mut'ah income at an unreasonable value, because SEMA regulates the amount of income must refer to the husband's real ability and the basic needs of the wife. SEMA also asserts that even if it is the wife who sues for divorce, the wife has the right to claim iddah/mut'ah and past income that the husband neglected to give to the wife. Through this rule, it is hoped that there will be no more decisions of the Religious Court that are considered to violate women's rights, both the right to livelihood and mut'ah rights.²⁴

When viewed from the function and purpose of the implementation of these legal rules, the rules are integratively in line with the components of (a) common sense, legal contextualization, (b) human rights, independence, equality, justice, and women's rights, (c) good order and civilization, (d) public interest (*mashlahah*).

The SEMA rules on mut'ah, iddah bread, child support, and madliyah livelihood have fulfilled four components of the six components of the objectives of sharia from the maqasid perspective of contemporary scholars.

Child care rights (*hadhanah*) and child support

Here are the new legal rules on child care rights (*hadhanah*) and child support:

Table 8. New legal rules on parenting rights children (*hadhanah*) and child livelihood

Theme	Regulation	Legal Rules
Amar determination of child custody (<i>hadhanah</i>)	SEMA Number 1 of 2017	In ammar the determination of child custody (<i>hadhanah</i>) must include the obligation of the holder of <i>hadhanah</i> rights to give access to parents who do not hold <i>hadhanah</i> rights to meet with their children. In legal considerations, the panel of judges must also consider that not giving access to parents who do not hold <i>hadhanah</i> rights can be used as a reason to file a lawsuit for revocation of <i>hadhanah</i> rights.
Confiscate Husband's Property to Support Children	SEMA Number 5 of 2021	To fulfill the principle of the best interest of child and the implementation of Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Against the Law, against the burden of child support, the wife can apply for confiscation of the husband's property as a guarantee for the fulfillment of child support and the object of the guarantee is described in detail in the <i>posita</i> and <i>petitum</i> of the lawsuit, whether in convention, reconvention or lawsuit itself.
Increase in 10% - 20% Child Support	SEMA Number 3 of 2015	Amar regarding the burden of child support should be followed by an addition of 10% to 20% per year of the specified amount, excluding education and health costs.

²⁴ Kholidah dkk., "Violation of Women's Rights on Divorce: Study on Religious Court Decision," *Journal of Law and Sustainable Development* 11, no. 6 (12 September 2023): e1230, <https://doi.org/10.55908/sdgs.v11i6.1230>.

Past Income (Madliyah) Children	SEMA Number 2 of 2019	The past income (madliyah bread) of a child neglected by his father can be brought a lawsuit by his mother or the person who actually took care of the child
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The table above shows that there are four new rules governing child custody rights (hadhanah) and child support. In 2015, SEMA stipulated that the court's provision for children must be accompanied by an increase in income of 10 - 20% each year excluding education and health costs. This certainly confirms the position of parents (read: fathers in *table 8*) as the main responsible in terms of the cost of children's needs as stipulated in Article 80 KHI concerning the obligations of the husband and Article 105 KHI concerning the costs of maintaining children borne by the father. The rule of adding 10 – 20% increase from the stipulated income also protects women (if they are designated as hadhanah holders), because economic inflation is an inevitable necessity.

Then in 2017 SEMA again regulated the obligation for hadhanah holders to provide access to other parents who do not have hadhanah rights to meet with the child, and if access is not given it will potentially lead to the revocation of the right to the hadhanah. In 2019, the Supreme Court again ruled on the lawsuit against the past income of a child who was neglected by his father. This affirmation clarifies the position of the Supreme Court on the claim of past income of children, because previously there was Supreme Court jurisprudence in cassation decision Number 608 K / AG / 2003 which stated that the income of madliyah (past) children cannot be sued because the income for children is included in the category of *lilintifa*.²⁵ Finally, in 2021, the Supreme Court regulated the confiscation of husband's property for the purposes of providing for children.

When viewed from the purpose of enforcing these legal rules, the rules are integratively in line with the components of (a) human nature, moral improvement (b) common sense, legal contextualization, (c) human rights, independence, equality, justice, and women's rights, (d) good order and civilization, (e) public interest (mashlahah). Meanwhile, the SEMA rules on mut'ah, iddah bread, child bread, and madliyah livelihood have fulfilled five components of the six components of the objectives of sharia from the maqasid perspective of contemporary scholars.

Conclusion

This research finds that the issuance of SEMAs by the Supreme Court from 2012 to 2022 related to Islamic family law has fulfilled the aspects of maqasid sharia according to contemporary scholars. These aspects of maqasid sharia include faith, which encompasses creed and monotheism; reason and legal contextualization; human rights, which encompass freedom, equality, justice, and women's rights; enhancing order and better civilization; and prioritizing the public interest or masalahah. The findings of this research can strengthen the issuance of SEMAs, particularly in the field of Islamic family law. It encourages judges in Religious Courts to better implement these SEMAs because they contain aspects of maqasid sharia and the aspect of public benefit (*masalahah*).

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²⁵ A Zuhdi Muhdlor, "Apakah Nafkah Madliyah Lampau Anak yang Tidak Terbayarkan Mutlaj Lilintifa," *Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung Republik Indonesia* (blog), Desember 2013, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/apakah-nafkah-madliyah-lampau-anak-yang-tidak-terbayarkan-mutlak-lilintifa-drs-h-ahmad-zuhdi-muhdlor-sh-m-hum-a-m-natsir-asnawi-shi-1712>.

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