

## ISLAMIC LEGAL VIEWS ON DIVORCE THROUGH ELECTRONIC MEDIA

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### Abstract

*This study analyzes the views of Islamic law on divorce through electronic media. A new problem that requires a comprehensive review to provide certainty of Islamic law without leaving the teachings of the Qur'an and Sunnah that has been outlined by Allah SWT. However, in the development of increasingly sophisticated technology, it is easier for anyone to divorce his wife, one of which used to be known as divorce by letter or writing, so now it can be easier and faster to get to the target, namely the husband, who only by doing sending written messages remotely by means of electronic media in the form of mobile phones/electronic media. With this, the legitimacy of the fall of divorce invites pros and cons for the community.*

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## INTRODUCTION

Islamic law is generally divided into two main areas: the law governing the relationship between creatures and their Creator, and the law governing relationships between creatures (muamalah). The field of muamalah law itself comprises several areas of legal study, one of which is family law, or (al-Akhwal as Syashsiyah). This statement was further emphasized by Musthafa Ahmad Az-Zarqa, as quoted by Ahmad Azhar Basyir in his book "Asas-Asas Hukum Muamalat" (Assistant Law of Muamalat), stating that al-Akhwal as Asyahsiyah is a study of Islamic law that specifically addresses provisions related to family ties. Marriage is a component studied in the process of maintaining family ties.

According to Marriage Law No. 1 of 1974, the purpose of marriage is to establish a happy and eternal family (household) based on the One Almighty God. This law affirms that every married couple can create a lasting and harmonious household throughout their lives. Meanwhile, according to Masdar Hilmi, the purpose of marriage according to Islamic law is not only to fulfill physical and spiritual needs, but also to establish a family and continue and nurture offspring throughout life. It also prevents adultery, and also creates peace and tranquility for the couple, their families, and society.

However, in reality, navigating a marriage is not easy, with many trials and tribulations. Differences of opinion, economic factors, boredom, and material shortages can sometimes become minor obstacles that lead to rifts in marital relationships. A once-harmonious family can turn into a rift of quarrels and disputes that require swift resolution. If marital turmoil cannot be resolved or reconciled, separation or divorce can be a last resort.

In Islamic jurisprudence (fiqh) terms, divorce, or the termination of a marital relationship, is "talaq" or "furqah," the opposite of "joining together." The linguistic definition of divorce means "separation" and

"letting go." According to Islamic law, divorce, or talaq, is the severing of the legal bonds of husband and wife by the husband with certain words or pronouncements, valid for the immediate future. According to Soemiati in her book, *Islamic Marriage Law and Marriage Law*, talaq includes all forms of divorce, whether decreed by the husband, by a decree from a Religious Court, or by the death of one of the spouses.

Several pillars and conditions must be met for a divorce to be valid. The pillars of divorce include: husband, wife, *sighat talaq*, and an element of intent. A husband can issue a divorce using either a *sighat* in accordance with Islamic law or a legal act. If a husband issues a *sighat* in accordance with Islamic law, the divorce will be final even without intention, differing slightly from a divorce in accordance with Islamic law, where intention is required for a divorce to be final.

The rapid development of science and information technology has brought a new paradigm in understanding the various issues that arise in society. Thus, society must be able to respond wisely and prudently in resolving existing problems. It is undeniable that in today's digital era, which transcends time and space, many new issues arise that require comprehensive analysis to provide certainty regarding Islamic law without deviating from the teachings of the Qur'an and Sunnah, as outlined by Allah SWT. However, with increasingly sophisticated technological developments, it has become increasingly easier for anyone to divorce their wife. One example is the previously common practice of divorce by letter or writing. Now, it can be more easily and quickly reached the intended recipient, the husband, simply by sending a written message long-distance via electronic media such as a mobile phone. This legality of divorce has drawn both pros and cons within the community.

Based on the above discussion, the author is interested in reviewing Islamic law's perspective on divorce through electronic media.

## **METHOD**

Based on the research description, a research method is required. Research methods are crucial in conducting legal writing, enabling the author to understand the significance of the research, evaluate the research results, and foster a skeptical, analytical, critical, and creative mindset. Therefore, the author will utilize one of these research methods, namely the normative juridical research method. This normative juridical research method begins with legal research using secondary data, which is generally ready-made.

Normative juridical research is conducted by examining library materials or secondary data. Secondary data in the legal field is divided into:

1. Primary legal materials, which are legal materials with binding legal force, such as applicable laws and related laws.
2. Secondary legal materials, which are materials that provide explanations of primary legal materials, such as research results, library materials (literature), and other legal publications related to the issues discussed in this research.
3. Tertiary legal materials, namely materials that provide guidance and explanations for primary and secondary legal materials, for example dictionaries, encyclopedias and the internet.

## **RESULTS**

Electronic divorce is a divorce decreed by a husband against his wife via an electronic text message sent to her. Although divorce is permissible, it is also deeply hated by Allah SWT. As the Prophet Muhammad (peace be upon him) said, "There is nothing that Allah SWT has made permissible but He hates more than divorce." Divorce laws can vary depending on the circumstances of the husband or wife, as follows:

- a. First: It is obligatory when a conflict arises between the husband and wife, and there is no other option but to bring in a judge to handle the case for both parties. If the judge deems divorce to be in their best interests, then divorce becomes obligatory.
- b. Second: Divorce is disliked if the divorce between husband and wife is carried out without any demand or need, or if the divorce is granted to a pious or virtuous wife.
- c. Third: It can be permissible if the divorce is only for necessity, such as divorcing a wife who is no longer loved or liked, resulting in the husband refusing to have sexual relations with her or providing maintenance.
- d. Fourth: sunnah, if the divorce is carried out only when the wife ignores the commands of Allah SWT, such as prayer, fasting, and other obligations.

Meanwhile, the husband is no longer able to force her and is unable to maintain a household with her. According to Imam Ahmad, such a wife should not be retained because it could weaken the husband's faith. In such a marital situation, the husband is not wrong to be harsh with his wife, seeking to redeem himself by returning her dowry in exchange for a divorce. As Allah SWT says in Surah An-Nisa', verse 19, which means: "...and do not hinder them (wives) from taking back part of what you have given them, unless they commit abomination openly..." (Q. S. An-Nisa': 19).

Divorce is prohibited if it is carried out without justifiable grounds, such as:

- a. First: divorcing a co-wife who has not fulfilled her turn or divorcing a husband who is seriously ill with the intention that if he dies, the wife will not receive his inheritance.
- b. Second: divorcing his wife in three simultaneous divorces or one divorce but repeated so that three or more divorces are sufficient.
- c. Third: when a wife is in a state of purity after intercourse.
- d. Fourth: divorcing her during menstruation or postpartum.

A husband can divorce his wife in various ways. Some are delivered in writing, others use sarcasm, and still others are delivered clearly and directly to the wife. In this case, in keeping with modern developments, divorce can also be granted electronically. A written divorce is a divorce in writing delivered by the husband to his wife, who then reads it and understands its contents and intent. A written divorce can be considered valid even if the husband can pronounce it. This electronic divorce is considered a written divorce because it uses clear, legible writing, allowing the wife to understand the meaning of the text message. A husband who wishes to divorce his wife electronically is considered to have divorced if the following conditions are met:

- a. First, it must be witnessed by two witnesses.
- b. Second, when writing the divorce statement, it must be accompanied by the intention to divorce his wife and the writing must be clear and not figurative.
- c. Third, it must be done in a truly emergency situation. Fourth, the wife must receive the message and understand its meaning.

According to the results of the Ijtima' session of the Indonesian Ulema Council on July 1, 2012, in Tasikmalaya, divorces that occur outside of court, whether written or verbal, must be reported to the court. This means that if, according to the panel of judges, the divorce does not meet one of the grounds for divorce, it is legally invalid. Subsequently, the Muhammadiyah Tarjih Council, in its Tarjih fatwa on Friday, 8 Jumadil Ula 1428 AH / May 25, 2007 CE, ruled that divorce must be pronounced before a religious court. Therefore, divorces, whether verbal or written, that occur outside of court are legally invalid. Based on the above descriptions, the researcher argues that Allah SWT's word in the Quran, Surah At-Talaq, verse 2, reads: "And call two just witnesses among you, and establish your testimony for Allah..." (Surah At-Talaq: 2).

Therefore, according to the author, a husband divorcing his wife electronically is not permitted, because it violates the provisions of Surah At-Talaq, verse 2, namely the absence of two just witnesses.

Furthermore, from an ethical standpoint, it is highly immoral, demonstrating the husband's arbitrariness regarding his right to divorce by disregarding his wife's feelings. Marriage begins with a good meeting, and ultimately, the divorce must be resolved properly according to Islamic law.

In Islamic jurisprudence, rejecting harm (*muḥārat*) takes precedence over seeking benefit. Based on the above principle, if this divorce practice is legalized or considered prohibited, it will cause more harm than benefit, because the advantages of this divorce practice are only limited to saving time and money, which are The orientation of modern society. However, considering the shortcomings of the practice of divorce, it is considered a form of harassment against women and is vulnerable to abuse by irresponsible parties, as well as demeaning to dignity and respect.

The commitment of marriage was initially built to be a lifelong commitment for each couple. However, the realities of life can change all these beautiful dreams, with various life challenges faced by each couple. The reality of life Nowadays, many married couples divorce without further considering the consequences. In fact, many divorces end in intra-family conflict over child custody, marital property, and other matters. However, as mentioned in the previous discussion, divorce should be conducted in a manner that is acceptable to maintain the family ties between husband and wife.

According to several Islamic scholars, divorce via electronic media is as follows:

a. Saad Wahid, a professor at the Sharia Faculty of IAIN Sunan Kalijaga Yogyakarta, stated, "In my opinion, divorce via text message fulfills Islamic law, but divorce via text message must be pursued in a religious court."

b. KH. Prof. Dr. Umar Shihab. He believes that divorce must be declared in principle. This can be done verbally or in writing. Text messages fulfill this requirement and are therefore still valid. He added that in this era of technological sophistication, people can communicate remotely using communication devices. However, it's better to divorce verbally, considering the pros and cons. If a divorce is simply a text message, it's difficult to establish a dialogue, let alone bring witnesses and mediators. However, if it's verbally, the husband's wisdom may be undermined after the two have discussed it. Because divorce is not a common practice, couples contemplating divorce should be extra cautious. They should not do so in anger.

c. Prof. Drs. Achmad Faishol Haq, M.Ag, as reported on the Gatra magazine website, has an interesting opinion: legally permissible, but morally unacceptable. This opinion refers to the core teachings of Islam, namely faith, deeds (including law), and morals. While divorce via electronic media is legally valid, ethically, it is unethical.

d. KH.A. Masduqi Mahfudz, he is of the opinion that if a person divorces his wife via text message when writing his heart If the intention is not there, the divorce is valid, but if the intention is not there, the divorce is invalid.

e. KH. Ahmad Daeroby, M.Ag., stated in a session of the Hisbah Council of the Central Executive Board of the Islamic Union that a divorce via text message is considered valid if it meets the following requirements:

- 1) It must be believed that the sender is truly the husband, and not just a mere sham.
- 2) It must be accompanied by a clear intention and *sighat* (*sharih*), not a *kinayah* (*figurative expression*).
- 3) It must be carried out in a truly emergency situation, and preferably witnessed and reported to the local religious court.

The Indonesian Ulema Council, as stated in the results of the *ijtima'* session of the Indonesian Ulema Council on July 1, 2012, in Tasikmalaya, stipulates that divorces occurring outside of court (whether written or verbal) must be reported to the court. This means that if, according to the panel of judges, one of the grounds for divorce is not met, the divorce is invalid.

According to Indonesian scholars, members of the Islamic Religious Council of Singapore (MUIS), divorce declarations made electronically are invalid. Rif al-Ka'bah, a Supreme Court Justice in Cairo,

Egypt, spoke out about divorces made electronically, such as mobile phones. He disagreed with the use of all media for divorce. He considered telephones a more feasible method than email, SMS messages, faxes, etc. His reasoning was that the medium used is more authentic. This means it is difficult to ensure that emails, SMS messages, faxes, etc., were actually sent by the recipient.

As quoted by [republika.co.id](http://republika.co.id), Prof. Muhammad bin Yahya bin Hasan An-Najmi (an expert member of the Jeddah International Islamic Fiqh Committee) in his book entitled "The Law of Ibrahim'uqud al-Ahwal as-Syakhsiyyah wa al'uqud at-Tijarjariyyah Ibra al-Wasail al-Liktraniyyah," states that scholars differ in their opinions regarding the legality of divorce issued via text message. There are two groups with different opinions regarding divorce via electronic media as follows:

a. First, they argue that divorces obtained through this method are invalid. This is because this form of divorce notification is prone to abuse and has a low level of accuracy. This is because anyone can hijack these media and use the husband's name.

b. Second, they argue that this type of divorce (text message) obtained through the media is considered valid because its legal basis is the same as a verbal divorce. Prof. Ahmad Umar Hasyim, former rector of Al-Azhar University in Egypt, once advised that it is best to never file for divorce via text message, unless physically disabled. Rather than sending a delegation, it is better to send a delegation.

c. A similar opinion was expressed by Mufti Jordani, Ashaikh Nuh bin Salman Al-Qudhat, and Prof. Dr. Abd. Rahman, head of the Comparative Fiqh Department at the Saudi Qadha Institute. He argued that divorce via the internet is permissible.

d. According to Anwar Sanusi, divorcing a wife through electronic means such as BBM (Blackberry Messenger) and SMS (Short Message Service) is highly unusual. Such divorces should be repeated. He added that Islam exists to honor humanity. Therefore, when we marry someone amicably, we must also divorce them amicably. If we met face-to-face with the family at the wedding, we should also meet face-to-face when divorcing. Therefore, we should return the woman to her family amicably.

Based on the explanation above, a divorce via electronic means by a husband to his wife is considered valid because the husband expressed his intention/will to divorce and the wife received the message. This occurred because of a divorce, or based on a divorce lawsuit. According to Islamic law, several grounds for divorce are outlined, which must be submitted to the court for processing and follow-up. These grounds are:

a. One party has committed adultery or become a drunkard, drug addict, gambler, or other intractable condition.

b. One party leaves the other party for two consecutive years without the other party's permission and without a valid reason or for other reasons beyond his/her control.

c. One party receives a five-year prison sentence or a heavier sentence during the marriage.

d. One party commits cruelty or serious abuse that endangers the other party.

e. One party suffers a physical disability or illness that prevents them from fulfilling their obligations as husband and wife.

f. Disputes and quarrels occur between husband and wife and there is no hope of resuming harmony in the household.

Based on these facts, performing divorce via electronic media is legally permissible in Islam as long as sufficient harmony and conditions are met. However, although divorce via electronic media can be a means or medium for issuing divorce, if it can be done through other, more prudent and judicious means, such divorce via electronic media is highly inhumane, unethical, and uncivilized. This is because it is contrary to the spirit and basic principles of Sharia law regarding marriage, oversimplifying the problem, being a form of technological intoxication, and an attitude that contradicts the process of achieving marriage, which was carried out with great care and accompanied by every form of respect and honor for the woman.

Divorce is not prohibited if the grounds for divorce are based on the applicable provisions, namely the marriage law. Although divorce is not prohibited, it is something that is most hated by Allah SWT. The most fundamental consequence of the dissolution of a marriage, in this case, is the provision that the divorce must be carried out in court, solely intended to ensure legal certainty regarding the divorce itself. As is known, decisions issued by judicial institutions have strong legal certainty and are binding on the parties mentioned in the decision.

## CONCLUSION

The increasingly sophisticated development of technology has made it easier for anyone to divorce their wife. One way to do this, which used to be through a letter or written request, is now easier and faster to reach the intended recipient, namely the husband, who only needs to send a written message long distance via electronic media such as a mobile phone. With this, the validity of the divorce invites pros and cons in society. Divorce is basically not prohibited if the reasons for the divorce are based on the provisions that regulate it, namely the marriage law. Although divorce is not prohibited, it is something that is most hated by Allah SWT. The most fundamental consequence of the dissolution of the marriage relationship in this case is the provision that the divorce must be carried out before a court, solely intended for the legal certainty of the divorce itself. As is well known, decisions issued by judicial institutions have strong legal certainty and are binding on the parties mentioned in the decision. As explained by the Indonesian Ulema Council (MUI) in its Ijtima' (conference meeting) on July 1, 2012, in Tasikmalaya, divorces occurring outside of court (whether written or verbal) must be reported to the court. This means that if the panel of judges does not meet one of the grounds for divorce, the divorce is legally invalid.

According to the author, a husband divorcing his wife electronically is not permitted, as it violates the provisions of Surah Ath-Thalaq, verse 2, namely the absence of two just witnesses. Furthermore, from a moral standpoint, it is highly immoral, demonstrating the husband's arbitrariness regarding his divorce rights by disregarding his wife's feelings. Marriage begins with a good meeting, and ultimately, the divorce must be resolved properly in accordance with Islamic law.

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According to Anwar Sanusi, divorcing one's wife through electronic media such as BBM (Blackberry Messenger) and SMS (Short Message Service) is highly unusual. Such divorces should be avoided. He added that Islam exists to honor humanity. Therefore, when we marry someone amicably, we must divorce them amicably as well. If we met the family face-to-face at the wedding, we should also meet face-to-face when divorcing. Therefore, we should return the woman to her family amicably.

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