

Divorce in the Digital Era: Legal Analysis of Divorce via WhatsApp in the Perspective of Fiqh and Indonesian Positive Law

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Abstract

This study aims to analyze the phenomenon of divorce carried out through digital communication media, especially the WhatsApp application, from the perspective of fiqh and positive Indonesian law. Along with the development of information technology, many couples have broken off their marital relationship through text messages, which raises questions about the legal validity of talaq carried out through the media. In fiqh studies, talaq via WhatsApp is considered valid by some scholars if it meets the requirements of clear intentions and deliberate delivery. However, there is an opinion that direct interaction is more recommended. In Indonesia's legal system, divorce must be processed through religious court procedures to be considered legally valid. At the same time, talaq carried out via WhatsApp has not been explicitly regulated in the applicable laws and regulations. The study also identified the legal impact of digital divorce, including the difficulties faced by individuals who divorce without a court decision, such as the inability to prove divorce status and difficulties in remarriage. Based on these findings, the study recommends regulatory updates regarding digital divorce and the need for public legal education on divorce procedures in Indonesia.

I. Introduction

Divorce is the termination of the marriage bond, resulting in a husband and wife no longer having the status of a married couple and not continuing to live together in the same household. In the Great Dictionary of the Indonesian Language, divorce is defined as the separation or termination of the marital relationship, resulting in the dissolution of the marriage bond. This is a common understanding associated with the term 'divorce'.

Divorce in Islam is not forbidden, but it should be seen as the last resort in resolving domestic problems when there is no longer a solution to be found. Although not banned, divorce is considered something that is very hated by Allah SWT. In Islamic law, divorce is considered a last resort to resolve disputes within the household. Therefore, the shari'a of divorce law, which gives the husband the right to impose talaq on his wife, has much wisdom. One of them is to overcome the dynamics of conflict in domestic life, which sometimes becomes a barrier to achieving the goal of forming a harmonious household and even has the potential to cause harm to various parties. In such conditions, talaq is a solution that must be considered, even if it is forced.

Divorce is not the result of a mutual agreement; therefore, it should not be pursued simply because the couple has agreed to separate. Instead, divorce is the last option or emergency avenue that can be chosen to resolve disputes in marriage. Divorce can only be carried out based on legal reasons stipulated in Article 39 paragraph (2) of Law No. 1 of 1974, which is then further explained in Article 19 of Government Regulation No. 9 of 1975. Legally, this reason for divorce is an alternative, meaning that a married couple can file for divorce with only one valid legal ground. In addition, it is also enumerative, which means that the interpretation and application of more detailed reasons for divorce law is the authority of judges in court.

The development of digital technology has had a profound impact on various aspects of life, including family relationships and marriage. One of the new phenomena that has emerged due to technological advances is the increase in digital divorce cases, primarily through instant messaging applications such as WhatsApp. The practice of talaq conveyed through digital media, such as text messages, emails, or social media, raises new questions about its validity from the perspective of Islamic law and positive law in Indonesia.

In Islamic law, talaq is the right of a husband that can be imposed on his wife under certain conditions and principles, including the existence of ijab qabul, a conscious will, and not in a state of anger or force (Dar al-Fikr, 2009). The development of digital communication technology has

brought significant changes in various aspects of human life, including family relationships. In this digital era, interaction between individuals is no longer limited to physical spaces but has shifted to virtual spaces. This also has an impact on legal practices in the family, one of which is the practice of divorce carried out through digital media such as WhatsApp short messages.

In law enforcement practice in Indonesia, there is no explicit regulation governing divorces conducted through digital platforms, such as WhatsApp. This creates legal uncertainty about whether talaq conveyed through instant messaging applications has legal force according to positive Indonesian law, as well as from the perspective of Islamic law. Meanwhile, in several other Muslim countries, there has been a discussion about the law of talaq through electronic media, which shows how complex this issue is (Hidayah, 2024). Islamic law regulates divorce, or talaq, with clear procedures, including the requirement of clear intentions, statements of talaq, and the presence of witnesses during the process. However, in the context of digital divorce, this mechanism is not always met, which poses challenges in applying Islamic law to divorces conducted via digital platforms (Azis, 2018).

In contemporary practice, there is a tendency for talaq to be carried out indirectly, such as through WhatsApp messages or other electronic media. This sparked a debate about the validity of digital talaq regarding whether it is legal for a husband to divorce his wife only with a written message without a face-to-face meeting. Meanwhile, Indonesia's positive law has formally regulated divorce procedures in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI). Article 39 of Law No. 1 of 1974 stipulates that divorce can only be granted after a court session has been held and the court has attempted to reconcile the parties without success. This means that every form of talaq, including those carried out digitally, cannot be immediately considered legal by state law without going through a religious court process. Therefore, talaq via WhatsApp can be a form of violation of the formal provisions of state law, although it may be considered valid according to some scholars (Noer, 2017).

Some Religious Court rulings have also noted that talaq through digital media, such as WhatsApp, is increasingly being filed, and most are not recognized as valid unless confirmed by the court (Noer, 2017). This phenomenon reveals a gap between social practice and the formal legal system that applies, underscoring the need for an in-depth academic study.

In Islamic fiqh, the utterance of talaq has enormous legal consequences. Talak can be valid even if it is conveyed in writing or through a messenger, as long as certain conditions are met.

However, what if talaq is conveyed through digital messages without the presence of witnesses, without clarity of intention, or even in an emotionally unstable state? (Buty, 2017) According to fiqh, talaq must be done lawfully, either through direct speech or in other ways agreed upon by Islamic law. In Indonesia's positive law, divorce is regulated in Law Number 1 of 1974 concerning Marriage, which regulates talaq procedures in court, but does not explicitly mention divorce via digital media. In light of this situation, it is essential to understand how Islamic law and state law address the practice of divorce facilitated by digital communication technology.

This phenomenon of digital divorce highlights the discrepancies between social practices and existing legal regulations, which warrant further investigation. On the one hand, divorce through instant messaging applications simplifies the communication process. However, on the other hand, it raises questions about the ethics and legality of the talaq law that is conveyed without formal procedures. Therefore, this study aims to analyze whether talaq delivered via WhatsApp is legal from the perspective of fiqh and how Indonesia's positive law responds to it, as well as its implications for the legal protection of parties involved in marriage.

2. Research Method

This research employs a qualitative method with a normative approach that focuses primarily on legal analysis. The primary purpose of this study is to analyze and understand the extent to which talaq is carried out through digital media, especially WhatsApp, is recognized in Islamic family law (*fiqh*) and positive law of Indonesia.

This type of research is a normative research that examines legal issues by focusing on the legal norms that apply both in fiqh and positive law in Indonesia. In addition, this research is also empirical because it will examine how the phenomenon of divorce via WhatsApp occurs in society, as well as its application in legal practice.

The approach used in this study is qualitative. This approach is used to gain a deeper understanding of the problems that arise related to digital divorce, both in terms of Islamic law and positive Indonesian law. The primary focus is to analyze existing legal norms and legal policies.

The data sources in this study consist of two types. First, primary sources include laws and regulations related to divorce and Islamic family law, such as Law Number 1 of 1974 concerning Marriage, and the comments of fiqh experts on digital talaq. Primary sources also include court decisions relevant to divorce, which can be accessed through digital media. *The second* category is Secondary Sources, which comprise books, journals, articles, and previous research that discuss

issues related to Islamic family law, digital divorce, and positive Indonesian law in the context of divorce.

The data collection technique employed in this study involves a literature review, which involves examining various books, journal articles, and regulations related to the research topic. Additionally, the author will conduct a document analysis of court decisions related to digital divorce that can be accessed in religious courts.

The data obtained will be analyzed using qualitative analysis techniques with a descriptive approach. The data will be analyzed to understand whether talaq through WhatsApp is acceptable in Islamic law (fiqh), as well as how Indonesia's positive law views this digital divorce. This analysis will be carried out by comparing various classical and contemporary fiqh texts as well as the practice of religious courts related to talaq.

3. Results and Discussion

Analysis of Talak via WhatsApp in Fiqh Perspective

Before discussing further how the paradigm of Islamic family law reform relates to the implementation of talaq through WhatsApp media, it is essential to first understand the meaning of talaq within the context of Islamic law. Etymologically, the word "talaq" comes from the root of the word *itlāq*, which means "to release the bond" or "to liberate". In a broader sense, talaq means "to end the marital status". Therefore, in sharia terminology, talaq is understood as an act that breaks or annuls the marital relationship (Kabalmay, 2015). According to al-Qaradawi, talaq in Islam should be done in a way that brings the husband and wife closer to a better goal, which is to maintain family relations. Talak that is carried out suddenly or without clarification can be considered contrary to these principles.

The rapid development of technology in the modern era has become an inevitable part of daily life. John Naisbitt, quoted by Husnul Yaqin, stated that technological advances have brought society into a phase of over-dependence on technology. Naisbitt identifies several sociological symptoms that reflect this phenomenon, including: 1) people tend to look for quick and instant ways to solve problems; 2) there is fear as well as respect for technology; 3) it is increasingly complex for society to distinguish between the real and the false; 4) violence is considered normal; 5) the love for technology manifested in the form of electronic entertainment; and 6) people live isolated or separate lives from each other. These phenomena further confirm that technology has become an indispensable part of modern society, making its existence almost impossible to separate from

human life today.

One of the impacts of the development of communication technology is the emergence of message-based communication devices, such as WhatsApp, which is often abbreviated as "WA". This app is a messaging platform that can be accessed via a smartphone. WhatsApp serves as a tool to facilitate communication through text messages. This application makes it easier for its users to communicate with quick and easy access. The use of WhatsApp has spread to various parts of the world, including Indonesia, and is now widely used by many people for communication (Trisnani, 2017).

WhatsApp, as a result of advances in communication technology, has now penetrated various aspects of modern human life, including domestic problems such as divorce. The use of WhatsApp to convey talaq, as previously explained, is not impossible, considering that this application is already well known and used by the public as a means of communication, even for matters with legal implications, such as giving talaq.

Although WhatsApp can be used as a means of conveying talaq, this method raises various problems, both related to the legal status of the divorce caused and with ethical principles that are considered incompatible with the norms of politeness. This is due to the assumption that talaq conveyed through WhatsApp lacks respect for the dignity and honor of women, who should be treated better. In addition, the issue of talaq is a very serious matter and cannot be underestimated, considering its consequences on the fate and legal status of the wife who receives talaq, which leads to divorce.

Fiqh regarding talaq generally stipulates that talaq is the right given to a husband to divorce his wife by meeting certain conditions, such as a clear statement, not in a condition of menstruation or iddah period, and accompanied by a legitimate intention. In classical fiqh literature, talaq is usually done by direct speech, and there are no provisions that specifically regulate divorce through digital communication media such as WhatsApp.

However, contemporary scholars have begun to examine this phenomenon using the principles of *qiyas* (analogy) and *istihsan* (better judgment). Some scholars argue that talaq through WhatsApp is still valid because communication through clear text can meet the elements of intentional statements, and without any legal barrier, even though it is done digitally. In this view, what is more important is the intention and clarity of the talaq statement, not the form or medium of delivery.

However, some scholars argue that talaq via WhatsApp has not met the legal provisions in fiqh, especially related to the element of *sunnat al-madhab* (custom) which requires talaq to be pronounced clearly and clearly, and carried out in front of the wife to ensure that the wife accepts the decision. The use of WhatsApp is considered inadequate, as it only allows for text-based communication without direct interaction.

Indonesia's Positive Law on Divorce via WhatsApp

In Indonesia's positive law, divorce is generally regulated by Law No. 1 of 1974 concerning Marriage and Supreme Court Regulation No. 3 of 2017. However, the two do not explicitly regulate divorces that are carried out through digital communication media such as WhatsApp. Therefore, this discussion examines how Indonesia's positive law addresses divorce through WhatsApp, drawing on existing legal principles.

Divorce Procedure According to Marriage Law

According to Article 39 of Law Number 1 of 1974 concerning Marriage, divorce can only be carried out by an application submitted by one of the parties to the Religious Court (for Muslims) or the District Court (for those who are not Muslim). In practice, this divorce is filed directly, and the court will verify that the reason for the divorce is legal under the law.

Divorce cannot be finalized solely through text communication or social media without following formal court procedures. Therefore, although talaq can be conveyed through digital media, it is not automatically legally recognized unless valid evidence is submitted to the court.

Supreme Court Regulation No. 3 of 2017

This regulation outlines the guidelines for adjudicating civil cases, including divorce, and guides procedures that courts can follow when handling divorce cases. Although this regulation does not mention divorces carried out through WhatsApp or other digital media, the Supreme Court allows the use of information technology in the judicial administration process.

For example, filing a divorce application through e-court allows the party filing a lawsuit or application to register online. However, this only applies to applications or case administration, and not to talaq or divorce proceedings that are carried out entirely through digital platforms such as WhatsApp.

Validity of Divorce via WhatsApp

In the context of divorce via WhatsApp, Indonesian law does not explicitly regulate or guide the use of messaging applications, such as WhatsApp, in divorce proceedings. WhatsApp, as a communication tool, is not used as an official platform for legal proceedings, including divorce. However, a divorce can be part of the evidence in court, whether it is verbal or in the form of a written document, such as a letter or email. A divorce that is only conducted through WhatsApp must be followed by legal court procedures.

Religious courts or District Courts may process divorces via WhatsApp if they are accompanied by valid evidence and proper legal procedures. However, to ensure the legality of the divorce, legal proceedings are still required in court, where the court will assess the evidence and reasons presented by both parties.

Divorce carried out through WhatsApp media is contrary to positive laws in Indonesia, especially the Marriage Law. According to Article 39 of the Marriage Law and Article 65 of the Religious Justice Law, divorce can only be carried out in a court session after the court has attempted to reconcile the two parties and failed to do so. This is also in line with Article 18 of Government Regulation No. 9 of 1975 concerning the Implementation of the Marriage Law, which states that divorce becomes valid from the moment it is announced in court.

The talaq pledge via WhatsApp can be forwarded to the Religious Court and used as evidence of a divorce outside the court. The divorce can be processed according to the procedures outlined in Law Number 3 of 2006 concerning Religious Courts, specifically Article 66, paragraph (1), which requires Muslim husbands seeking to divorce their wives to submit an application to the court for a hearing to be held to complete the talaq pledge.

Indonesian laws and regulations also stipulate that the reason for the breakup of a marriage includes divorce. Article 38 of the Marriage Law states that a marriage can end due to death, divorce, or a court decision. The same thing is also found in the Compilation of Islamic Law (KHI), Article 113, which states that marriage can end due to death, divorce, or a court decision.

From the perspective of the Marriage Law, divorce is carried out by a husband and wife with the court's approval after they have gone through the trial process. The court will try to reconcile the divorcing couple by considering the consequences of the divorce. At the same time, the husband and wife can resolve their problems through family counseling or other means recommended by Islam. The courts can decide on a new divorce if the peace efforts fail and the household is deemed

to be harmful if it continues.

Divorces carried out outside the court, such as through WhatsApp, result in legal uncertainty regarding the status of the divorce. The legal consequences of divorce will not apply because, according to positive Indonesian law, divorce is considered valid and has legal consequences only when the decision of the Religious Court, which has permanent legal force, has been determined (Suharto, 2020).

As a citizen living in a country of law, obeying the law's provisions is an obligation. Therefore, the divorce that occurs must be officially recorded in the Religious Court. Thus, divorce carried out through WhatsApp is invalid under the Marriage Law because it is not conducted in the presence of a court hearing. A divorce is only valid when the judge decides the case after the two parties have failed to reconcile and finally decides on a divorce (Yudistira, 2019).

Divorce has a significant legal impact, not only in the field of Family Law, but also in Material Law and Covenant Law. It is essential to recognize that a legal divorce under state law must follow a procedure established by the courts. This is regulated in Law Number 1 of 1974 concerning Marriage, which requires that divorce can only be carried out in front of a religious court session after peace efforts have failed (Fitri et al., 2022).

Divorces that are done out of court can give rise to a variety of legal issues. One of them is the inability to prove the status of the divorce legally due to the absence of a court-issued divorce certificate. As a result, individuals who divorce out of court may face difficulties when they want to remarry, as they are unable to show valid proof of their divorce. In addition, divorce out of court can also affect the maintenance rights of wives and children, as well as the division of joint property, since there is no official court decision to regulate these matters (Sahabiddin, 2024)

4. Conclusion

Based on the research results, it can be concluded that the phenomenon of divorce facilitated through digital media, especially WhatsApp, has a significant impact on the study of Islamic Family Law and Indonesian Positive Law. From a fiqh perspective, although there is no explicit provision regarding talaq via WhatsApp, some scholars argue that divorce through text messaging can be legal if it meets the conditions set out in Islamic law, such as clarity of intent and a deliberate statement of talaq. However, there are still differences of opinion, and some scholars consider this method not legitimate enough due to the lack of direct interaction that ensures both parties fully understand and agree to the divorce.

In Indonesia's positive law, divorce done through WhatsApp is not legally recognized as a divorce. This is because a valid divorce must go through religious court procedures and obtain a divorce certificate issued by the court. Out-of-court divorces, including those conducted through digital media, can create legal difficulties, such as the inability to prove the legal status of the divorce, which impacts subsequent marriage procedures.

Divorces carried out outside of court, including through digital media, can cause a variety of legal and social problems. One of them is the inability to legally prove the status of the divorce, which can complicate the remarriage process for the divorced party. It also has the potential to cause problems related to alimony rights, division of joint property, and child custody, which cannot be regulated without a valid court decision.

Therefore, there is a need for clearer and more adaptive regulations on technological developments in family law, encompassing both religious law and state law. In addition, it is essential to continue improving public understanding of legal divorce procedures, both in Indonesian positive law and in the practice of fiqh under Islamic principles.

References

- Al-Buti, M.. (2018). *Fiqh Al-'Usrah: A Study of Islamic Family Law* (Al-Kautsar Library, 2013)
- Aziz, M. Abdul. (2018). 'Electronic Talak and Challenges in Islamic Family Law in Indonesia', *Indonesian Islamic Law Journal*, Vol.. 10(2).
- Fitri, Yulisa, Jamaluddin, and Faisal. (2022). 'Juridical Analysis of Divorce Outside the Court According to Law Number 1 of 1974 concerning Marriage and According to the Opinion of Islamic Jurisprudence', *Suloh: Legal Scientific Journal*, Vol.3(2).
- Hidayah, Ahdiyatul. (2024) 'Analysis Of Divorce Law Through Electronic Media In The Perspective Of Positive Law And Islamic Fiqh', *Ijtihad: Journal of Islamic Law and Social Institutions*, Vol.40.2 (2024) <<https://journals.fasya.uinib.org/index.php/ijtihad/article/download/597/367>>
- Kabalmay, Husin Anang. (2015). 'Economic Needs and Their Relation to Divorce (Study on Divorce Lawsuits at the Ambon Religious Court)', *Tahkim Journal*, Vol.11(1).
- Noer, M. F. (2017) *Marriage Law in Indonesia: A Positive Legal Perspective and Islamic Law* (PT. Refika Aditama)
- Nurhasanah. (2022). 'Talak Through WhatsApp in the Perspective of Islamic Law and Positive Law', *Al-Ahwal Journal*, Vol.11(2).
- Sahabuddin. (2024). 'The Problem of Divorce Outside the Court and Its Implications for Post-Divorce Rights', *Journal of Education and Teaching Review*, Vol.7.3

- Suharto. (2020). *Family Law Reform in the Perspective of Indonesian Positive Law and Islamic Law* (Rajawali Publisher).
- Trisnani. (2017). 'The Utilization of Whatsapp as a Communication Media and Satisfaction in Delivering Messages among Community Leaders', *Journal of Communication, Media and Informatics*, Vol.6(3).
- Wahbah al-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuh* (Dar al-Fikr, 2009)
- Yudistira, Leon. (2019). 'Divorce Outside the Religious Court Reviewed According to Positive Law and Islamic Law (Divorce Study in Cigudeg Village, Bogor Regency)', *Journal of Legal Reasoning*, Vol.2(1).