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## **EMPIRICAL FACTORS OF TAKLIQ TALAQ THROUGH ELECTRONIC MEDIA IN VIEW OF POSITIVE LAW AND ISLAMIC LAW**

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**Abstrak:** Ucapan kata talak biasanya diungkapkan secara verbal atau langsung oleh suami terhadap istrinya, sehingga sang istri secara langsung dapat mendengar ungkapan kata cerai dari suaminya. Namun seiring era globalisasi, media komunikasi berupa Hp ternyata dijadikan oleh sebagian kalangan suami yang kecewa terhadap istrinya sebagai media untuk menyatakan cerai. Fenomena talak melalui media elektronik tersebut memunculkan persoalan hukum tentang keabsahannya dari segi hukum Islam. Berdasarkan ketentuan Pasal 65 Undang- undang No.7 Tahun 1989 juncto pasal 115 Kompilasi Hukum Islam (KHI) dijelaskan bahwa Perceraian hanya dapat dilakukan didepan majelis hakim dalam sidang pengadilan. Perceraian melalui media sosial banyak menuai pro dan kontra di kalangan ulama tentang keabsahannya. Talak melalui media elektronik handphone baik hanya berupa suara atau disertai dengan wujudnya dalam bentuk gambar (video call) secara syariat talak tersebut dinyatakan sebagai talak yang sah, Talak yang dilakukan melalui SMS maka para ulama mendudukan masalah ini sama dengan permasalahan perceraian melalui tulisan. Sedangkan menurut Undang-undang perkawinan di Indonesia baru dinyatakan sah jika di ucapkan di pengadilan agama.

**Kata kunci:** Takliq Talaq, Media Elektronik, Hukum Positif, Hukum Islam

**Abstract:** The words talaq are usually expressed verbally or directly by the husband to his wife so that the wife can directly hear the expression of the word divorce from her husband. But along with the era of globalization, communication media in the form of cell phones turned out to be used by some husbands who were disappointed with their wives as a medium to declare divorce. The phenomenon of talaq through electronic media raises legal questions about its validity in terms of Islamic law. Based on the provisions of Article 65 of Law No. 7 of 1989 juncto article 115 of the Compilation of Islamic Law (KHI) it is explained that divorce can only be carried out in front of a panel of judges in a court session. Divorce through social media reaps many pros and cons among scholars about its validity. Talaq through mobile electronic media either only in the form of sound or accompanied by its form in the form of pictures (video calls) in sharia talaq is declared as legal talaq, talaq is carried out via SMS, so scholars position this problem the same as the issue of divorce through writing. Meanwhile, according to the law on marriage in Indonesia, it is only declared valid if it is pronounced in a religious court.

**Keywords:** Takliq Talaq, Electronic Media, Positive Law, Islamic Law.



## INTRODUCTION

The rapid development of technology and the diversity of mass media help facilitate various affairs and target all aspects of life even marriage or divorce problems.<sup>1</sup> Divorce is a serious problem in society, because it is the cause of the decline in family resilience which is one of the Indonesian government's programs to create balanced population growth and quality families.<sup>2</sup> The divorce rate in big cities is caused by disputes between spouses dominating even up to 46 percent of the total divorce rate.

This is certainly a problem in society because the biggest factor of divorce is caused by the couple, not because of external factors or indeed because of fate (one partner dies, is disabled, or lost). Although divorce is permitted by Islam, as long as peace can be sought between spouses and awareness of the meaning of marriage as a strong bond *mistaken Ghalidan* as a means to help each other do good and get happiness in raising a family.<sup>3</sup>

Divorce (talaq) can be imposed by the husband to the wife if it fulfills several pillars, namely: the husband is converted; legally married wife; *sighat* talaq expressly by saying talaq or by innuendo; And there's an element of intentionality. While the conditions of speech that can be used to divorce a wife are of two kinds, namely;<sup>4</sup> speech that indicates divorce, not by deed; talak remarks were spoken deliberately. Divorce law can change according to the situation and conditions of husband and wife. First, divorce law becomes mandatory if there are frequent quarrels and there is no way out except separation. Second, divorce becomes *makruh* if there are no demands and needs that result in divorce. Third, the law changes if there is a need, for example divorcing a wife who is no longer loved or liked, resulting in the husband being reluctant to provide mental bread. Fourth, the law of the sunnah if the wife does not obey Allah's commandments and does not carry out other obligations.<sup>5</sup>

Divorce according to Law No. 1 of 1974 as a positive legal rule means legal action taken by a husband or wife to break ties marriage between them. So, divorce is the end of a relationship or bond between husband and wife due to a divorce lawsuit from the wife or talaq from the husband.<sup>6</sup>

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<sup>1</sup> Zaenal Arifin "Behavior of teenage gadget users; Analysis of sociological theories of education" Tribakti: *Journal of Islamic Thought*, Vol. 26, No. 2. 2015, p. 287-31.

<sup>2</sup> Article 1 Law No. 52 of 2009 concerning population development and development family.

<sup>3</sup> Sulaiman Rasjid, *Fiqh Islam*, (Bandung: Ray New Algensindo, 2012), p. 380.

<sup>4</sup> Karimuddin and Safrizal, "Determination of Talaq from the Perspective of Positive Law and Shafi'iyah Fiqh." *al-Fikrah Scientific Journal*, Vol. 1, No. 2 of 2020. p. 202-217.

<sup>5</sup> Moh. Nurussalam Afifi, "The Legality of Divorce Through Electronic Media According to Law Number 1 of 1974 concerning Marriage and Islamic Law", *Scientific Journal of Legal Sciences*, Vol. 26, No. 3, February 2020, p. 283-284.

<sup>6</sup> Moh. Nurussalam Afifi, "Legality of Divorce Through Electronic Media According to Law Number 1 of 1974 concerning Marriage and Islamic Law", *Journal of Legal Sciences*, Vol. 26, No. 3, p. 288.

saying talaq or by innuendo;<sup>7</sup> And there's an element of intentionality.<sup>8</sup> While the conditions of speech that can be used to divorce a wife are of two kinds, namely: speech that indicates divorce, not by deed; Talak's remarks were spoken deliberately.<sup>9</sup> Divorce law can change according to the situation and conditions of husband and wife. First, divorce law becomes mandatory if there are frequent quarrels and there is no way out except separation. Second, divorce becomes makruh when there are no claims and needs that result in divorce. Third, the law changes if there is a need, for example divorcing a wife who is no longer loved or liked, resulting in the husband being reluctant to provide mental bread. Fourth, the law of the sunnah if the wife does not obey Allah's commandments and does not carry out other obligations.<sup>10</sup> *Third*, the law permissible if there is a need, for example divorcing a wife who is no longer there loved or liked so that the husband is reluctant to provide inner and outer sustenance. *Fourth*, it is sunnah for the wife not carrying out God's commands and not carrying out obligations Which other.<sup>11</sup>

Divorce Which done with the method of divorce, generally husband directly says to the wife in a way direct Good with expression firm say divorce nor with sight kinayah so that the wife can understand the meaning of divorce from the husband. In the era of globalization, the phenomenon of severing marriage ties is encountered Not only in a way direct but also through media electronics such as SMS, telephone, or messages via media social.

Divorce through electronic media invites pros and cons among scholars in Indonesia about its validity. Quoting the statement of Moqsithi Ghazali from The Wahid Institute, the essence of divorce through electronic media is not only in the juridical-formal perspective, namely the validity of the divorce but also needs to be seen from a philosophical-normative perspective That is, divorce with social media is considered makruf and tarnishes the sanctity of marriage as a strong bond mistaken ghalidzan that has been established between husbands and wife.<sup>12</sup>

Based on the explanation above, the author endeavors to conduct literature research on the Validity of Talak Through social media in the Perspective of Islamic Law.

## METHOD

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<sup>7</sup>Abu Bakar Jabir al-Jazairi, *Muslim Encyclopedia*, trans. Fadhli Babri, (Jakarta: Darul Falah, 2000), p. 599.

<sup>8</sup> Kamluddin Priest, and Indrayana Nugraha, Divorce Through Media Electronic (SMS) In the Perspective of Positive Law and Islamic Fiqh, *Journal of Islamic Law and Economics* Vol. 13, No. 1, April 2019, p. 3.

<sup>9</sup> Vivi, Hayati, Juridical Impact of Divorce Outside of Court (Research in Cities Langsa). *Journal Law Ocean Justice*, Vol.10 No.2 July-December 2015, p. 220.

<sup>10</sup> Ronal Agusmi, et al. "The Implications of Repealing the Law of Mandatory Company Registration on The Company Legality After the Enaction of Indonesia's Job Creation Law." *Syariah: Jurnal Hukum dan Pemikiran* Vol. 2, No. 2 of 2022, p. 109-122.

<sup>11</sup>Moh. Nurussalam Afifi, The Legality of Divorce Through Electronic Media According to Law Number 1 of 1974 concerning Marriage and Islamic Law, *Scientific Journal of Legal Sciences*, Vol. 26, No. 3, February 2020, p. 283-284.

<sup>12</sup>Ibid.

This research is a type of library research. That is a series of activities related to library data collection methods.<sup>13</sup> Research that uses a way to obtain information data by placing facilities in the library, such as books, magazines, documents, records of historical stories, which are related to the discussion of talaq through mobile electronic media.<sup>14</sup> This study uses a type of literature research which is a normative approach method (legal research) with another name doctrinaire legal research. Doctrinaire legal research is conducted or aimed only at written regulations or other legal materials.<sup>15</sup>

The research method is normative research with a literature study method, aiming to explore the problem of the validity of talaq through social media based on the literature of Islamic legal studies on talak, because this study seeks to understand the phenomenon of talaq through existing electronic handphone media. The source of data used is first primary legal materials such as laws and regulations. Both secondary legal materials are obtained from books and writings related to the theme. Third, tertiary legal materials such as legal dictionaries and languages. The data collection techniques include literature review. The collected data is then analyzed by descriptive analysis.

## RESULTS AND DISCUSSIONS

Electronic media is used as an alternative to breaking the marriage cord, and the factor that causes people to divorce through electronic media is that it is easier to pronounce, namely through the media in question. Technological sophistication is also an influence on a person's decision to divorce only with electronic media.<sup>16</sup>

Ulema agrees that the dropping of talaq through online media is legal in the sense of falling talaq by qiyas to the dropping of talaq through written media such as letters. Illat owned by the online media and letters are the same, especially in that both are communication media in the form of writing containing talaq messages. But this makes it easy to arbitrarily impose talaq on women something that must be avoided because it is not in line with the rules of law reform that are oriented towards realizing benefits and refusing harm.<sup>17</sup>

### Takliq Talak Through Electronic Media in Indonesia

In takliq, talak language consists of two words, namely takliq and talaq. the word talaq which means to leave, separate, or let go. While the word takliq comes from the Arabic word *allaqa-yualliqu-ta'liqan* which means to hang. While the word talaq comes from

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<sup>13</sup>Mahmud, *Educational Research Methods*, (Bandung: Pustaka Setia, 2011), p. 31.

<sup>14</sup>Abdul Rahman Sholeh, *Religious Education and Development for Nation*, (Jakarta: Raja Grafindo Persada, 2005), p. 63.

<sup>15</sup>Bambang Waluyo, *Legal Research in Practice*, (Jakarta: Sinar Graphics, 2002), p.13.

<sup>16</sup> Moh. Nurussalam Afifi, "The validity of divorce through electronic media according to Law Number 1 of 1974 concerning Marriage and Islamic Law". *Dynamics, Scientific Journal of Legal Sciences*, Vol. 26, No. 3, Februari 2020, p. 277-294.

<sup>17</sup> Ramdani Wahyu Sururie, "The dynamics of talaq dropping via whatsapp in the paradigm of Islamic family law reform". *Al-Hukama the Indonesian Journal of Islamic Family Law*, Vol. 11, No. 1, Juni 2021. p. 160-184.

the word *allaqa-yualliqu-ta'liqan*, which means talak, divorce, or the finished word separation. So, in terms of the takliq language, talaq means hanging talaq.<sup>18</sup>

Takliq talak through social media in Indonesia can be said to be a phenomenon that has grown in popularity in recent years. With the widespread use of social media in Indonesia, many couples use it as a means to convey talaq.

One of the main reasons for using social media in takliq talak is the ease and speed of communication. With just a few clicks, a person can convey talaq to their partner through private messages, comments, or even through public status. This allows couples who are in far-flung places to carry out the talaq process quickly and practically.<sup>19</sup>

However, the use of social media in takliq talak also has social and psychological consequences that need attention. The talaq process carried out through social media can be more open, visible to many people, and can trigger negative responses or conflicts with other parties. In addition, the use of social media can also affect the privacy and confidentiality of the talaq process, because messages and information conveyed through social media can be easily spread and accessed by others.<sup>20</sup>

From a social perspective, the use of social media in takliq talak can also reflect changes in the way of communicating and interacting in husband-wife relationships in the digital age. It can also affect patterns of family relationships, social interactions, and gender dynamics in society.<sup>21</sup>

The way a husband divorces his wife can be through various versions, some are conveyed by letter or writing, some by using the word satire, and some are conveyed clearly and directly to the wife. In this case, because in accordance with the progress of the times in this modern era, divorce can also be dropped through electronic media.

A written divorce is a written divorce submitted by the husband to his wife, then the wife reads it and understands its content and intent. Divorce in writing can be considered as falling (valid) even though the husband can pronounce it.<sup>22</sup>

Divorce through electronic media is included in the category of divorce with writing because the divorce uses clear and readable writing so that the wife also understands the meaning of the content of the short message. A husband who wants to divorce his wife through electronic media is considered to fall if qualified. First, witnessed by two witnesses, Second, when writing lafadz's divorce must be accompanied by the intention of divorcing his wife and writing that is not figurative. Third, it is done really in

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<sup>18</sup>Mahmud Yunus, *Indonesian Arabic Dictionary*, (Al Qur'an Translation Organizing Foundation, Jakarta: 2007), p. 227.

<sup>19</sup> Mohammed Khusaini, et al. "Creating a Harmonious Family Through Social Media Facebook in West Lampung." *El-Masblabah* Vol. 12, No. 2 of 2022. p. 139-152.

<sup>20</sup> Ahmad Ropei and Ramdani Wahyu Sururie. "Dynamics of Imposing Divorce via WhatsApp in the Islamic Family Law Reform Paradigm." *Al-Hukama': The Indonesian Journal of Islamic Family Law*. Vol. 11, No. 1 Year 2 021, p. 160-184.

<sup>21</sup> Anita Rahmawati, "Harmony in career women's families: efforts to realize gender equality and justice in the family." *Palastren: Journal of Gender Studies* Vol. 8, No. 1 of 2016. p. 1-34.

<sup>22</sup> Muhsin and Soleh Hasan Wahid. "Talak Outside the Court from a Positive Jurisprudence and Legal Perspective." *Al-Syakhshiyah: Journal of Law & Family Studies* Vol. 3, No. 1 of 2021. p. 67-84.

a state of dharurat. Fourth, the wife must receive the message and understand the intent of the content.<sup>23</sup>

So, according to the author, a husband who divorces his wife through electronic media is not allowed, because there are no two witnesses and from a moral point of view it also shows the arbitrariness of the husband who has the right to divorce without regard to the act of harassing the wife or not, this is an act that according to the author as an act that is not *ma'ruf*, unethical and plays with divorce. In the rules of jurisprudence which read:

It means: “*Rejecting mudharat (danger) takes precedence over taking benefits.*”

From the explanation of the verse above, the author says that if the practice of divorce is legalized, it will cause more *madharat* than the benefits, because the advantages of this divorce practice are only about time and money efficiency which is the orientation of modern society. However, seeing the shortcomings of the divorce practice is considered a form of harassment against women and prone to abuse by irresponsible parties and is considered as degrading the dignity and dignity of women. It also contradicts the principles of marriage which states that a marriage is a firm bond or covenant.

#### Empirical Factors; Sociological and Anthropological Aspects of Takliq Talak Through Social Media

In terms of empirical factors, research and empirical data on takliq talak through electronic media in Indonesia are still limited. However, there are several factors that can be seen from social observations and daily life in society. Sociologically, there are several factors that can influence the use of electronic media in takliq talak in Indonesia.<sup>24</sup>

The development of technology and the internet has facilitated public access to electronic media, including in terms of online communication and interaction. This can affect the ways of delivering talaq in the community, because electronic media becomes a faster, easier, and more efficient alternative.<sup>25</sup>

In addition, social factors also play a role in the use of electronic media in takliq talak. The development of women's role in society, including in terms of education and economic independence, can influence their decision to use electronic media to deliver talaq. Changes in family relationship patterns and gender dynamics can also play an

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<sup>23</sup> M. Irfan Syaifuddin, "The Validity of Divorce Through Social Media from an Islamic Legal Perspective." *Islamic Family Law Journal* Vol. 5, No. 2 of 2020. p. 134-153. {Citation}

<sup>24</sup> Fry Daus La Patilaiya, Muhaimin Limatahu, and Faisal Faisal. "Comparison of the Legal Protection for Wives as Domestic Violence Victims in Islamic Law and Republic of Indonesia Law No. 23 of 2004 on the Elimination of Domestic Violence." *de Jure Jurnal Ilmiah Ilmu Hukum* Vol. 3, No. 1 Tahun 2021. p. 10-21.

<sup>25</sup> Eddie Widianto, "Utilization of information technology-based learning media." *Journal of Education and Teaching* Vol. 2, No. 2 Year 2021. p. 213-224.

important role in the selection of electronic media as a means of communication in divorce proceedings.<sup>26</sup>

From an anthropological perspective, cultural factors, customs, and local values also play a role in the use of electronic media in takliq talak in Indonesia. Each region in Indonesia has different traditions and norms when it comes to divorce. The use of electronic media in takliq talak can reflect adaptation and changes in local culture. However, it is important to remember that the use of electronic media in takliq talak can also be contrary to traditional values and customs in some areas.<sup>27</sup>

In addition, the use of electronic media in takliq talak can also affect the accessibility and participation of women in the talaq process. In some cases, the use of electronic media can provide benefits for women who want to obtain talaq and gain financial and social freedom. However, on the other hand, there are also potential risks and inequities in the use of electronic media, especially if there is pressure or influence that forces women to accept talaq through such media.<sup>28</sup>

#### The Validity of Takliq Talak Through Electronic Media in the Framework of Marriage Law in Indonesia

In the context of positive law, takliq talak through electronic media involves considerations about the validity and validity of talaq conveyed through that media. This relates to the formal requirements that must be met in order for talaq to be considered valid according to positive law. For example, whether talaq delivered through electronic media is considered valid if it does not meet requirements such as testimony and written notice stipulated by law.<sup>29</sup>

Meanwhile, in the perspective of Islamic law, takliq talak through electronic media involves consideration of the fulfillment of the legal requirements of talaq according to Islamic teachings. In this regard, it is important to understand how electronic media can be considered as a legitimate means of delivering talaq according to Islamic law.<sup>30</sup>

Analysis of takliq talak through electronic media within the framework of positive law and Islamic law may also involve other aspects, such as the protection of women's and children's rights in talaq cases, as well as the social and cultural implications of the use of electronic media in the talaq process.

#### 1. The mechanism of talaq in the Marriage Law and the Compilation of Islamic Law (KHI)

As referred to in Law No. 1 of 1974 concerning marriage, that the purpose of marriage is to form a happy, eternal family based on the one and only god, or in the

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<sup>26</sup> Nur Alfadhilah Ruslan and Abdul Halim Talli. "Effectiveness of Electronic Proceeding in Resolving Divorce Cases at the Parepare Religious Court." *Qadauna: Scientific Journal of Islamic Family Law Students* Vol. 2, No. 3 Years 2 021. p. 450-464.

<sup>27</sup> Yayan Sopyan, *Extrajudicial Divorce Law (Comparative Analysis of Indonesian & Malaysian Family Law)* BS thesis. Faculty of Sharia and Law, Syarif Hidayatullah State Islamic University, Jakarta, 2022.

<sup>28</sup> Syaifuddin and Sri Turatmiyah. "Legal Protection for Women in the Process of Suing for Divorce (Khulu') in the Palembang Religious Court." *Journal of Legal Dynamics* Vol. 12, No. 2 of 2012. p. 248-260.

<sup>29</sup> Sami Faidhullah, "Taklik divorce as a reason for divorce (review of Islamic law and positive law)." *AL-RISALAH* Vol. 13.No. 1 of 2017. p. 91-124.

<sup>30</sup> M. Irfan Syaifuddin, "The Validity of Divorce Through Social Media from an Islamic Legal Perspective." *Journal of Islamic Family Law* Vol. 5, No. 2 of 2020. p. 134-153.

language of the Compilation of Islamic Law (KHI) called *mistaqon ghaliza* (strong bond).<sup>31</sup>

Article 38 of Law No. 1 of 1974 on marriage and article 113 of the Compilation of Islamic Law states that: Marriage can be broken up because<sup>32</sup>

- a) Death.
- b) Divorce.
- c) Religious Court Verdicts.

Article 39 of Law No. 1 of 1974 on Marriage states:

- a) Divorce can only be carried out before a court hearing after the court concerned has tried and failed to reconcile both parties.
  - b) To carry out a divorce there must be sufficient reasons that between husband and wife it will not be able to get along as husband and wife.
  - c) The procedure for divorce before the court is regulated in laws and regulations.<sup>33</sup>
- And in article 115 of the Compilation of Islamic Law<sup>15</sup> and article 65 of Law No. 7 of 1989 concerning Religious Courts, it is also explained that:

"Divorce can only be carried out before a court hearing after the court concerned has tried and failed to reconcile both parties"<sup>34</sup>

The article explains that divorce can only be carried out and is valid according to law if it is carried out through a court hearing process and has strong reasons for divorce to occur.

Then in article 117 of the Compilation Islamic Law states that:

*"Talaq is the husband's vow before a religious court which is one of the reasons for the breakup of marriage, in the manner referred to in articles 129, 130, and 131."*<sup>35</sup>

Articles 129, 130, and 130 of the Compilation of Islamic Law state the following:<sup>36</sup>

KHI article 129:

*"A husband who imposes talaq on his wife submits an application, either oral or written, to the court in which the wife resides with reasons and requests that a hearing be held for that purpose"*.

KHI article 130:

*"The Religious Court can grant or reject the request, and legal action and cassation can be requested against this decision."*

KHI article 131:

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<sup>31</sup>Ahmad Roiq, *Islamic Law in Indonesia*, (Jakarta: Raja Graindo, Cet II, 1997), p. 268.

<sup>32</sup>Mardani, *Islamic Law* (Collection of Regulations Concerning Islamic Law in Indonesia), Edition II, (Jakarta: Kencana, 2015), p. 159.

<sup>33</sup>Amir Syarifudin, *Islamic Marriage Law in Indonesia*, (Jakarta: Kencana, 2014), p. 227.

<sup>34</sup>Law no. 7 of 1989 concerning Religious Courts, art. 65.

<sup>35</sup>Instruction of the President of the Republic of Indonesia No. 1 of 1991 concerning the Compilation of Islamic Law, article 117.

<sup>36</sup>Mardani, *Islamic Law* (Collection of Regulations Concerning Islamic Law in Indonesia), p. 162-163. Maskur Rosyid and Nisrina Khairunnisa, "Redefining Ḥifẓ Al-Dīn as the Basis of Religious Moderation," *Al-Banjari : Jurnal Ilmiah Ilmu-Ilmu Keislaman* 21, no. 2 (2022), <https://doi.org/10.18592/al-banjari.v21i2.8453>; Ma'sum Anshori and Teten Jalaludin Hayat, "Islamic Universality for Global Goodness: Integration of Fiqh and Sufism," *Al-Banjari : Jurnal Ilmiah Ilmu-Ilmu Keislaman* 22, no. 1 (July 11, 2023): 87–105, <https://doi.org/10.18592/al-banjari.v22i1.7846>.

1. The relevant religious court examines the application referred to in article 129 and within a period of thirty days summons the applicant and his wife to ask for an explanation regarding everything related to the intention of imposing a talaq.
2. After the religious court failed to advise both parties and it turned out that there were sufficient reasons to impose talaq and it was no longer possible for the person concerned to live in harmony within the household, the religious court handed down a decision regarding permission for the husband to pledge talaq.<sup>37</sup>
3. After the decision has permanent legal force, the husband pledges his talaq in front of a religious court session, attended by his wife or her proxy.<sup>38</sup>
4. If the husband does not pronounce the vow of talaq within 6 (six) months, starting from the decision of the religious court regarding permission for the vow of talaq which has permanent legal force, then the husband's right to vow talaq is terminated and the marriage bond remains intact.
5. After the trial of witnessing the talaq vow, the religious court makes a determination regarding the occurrence of talaq, fourfold which is proof of divorce for the former husband and wife. The first sheet along with the talaq pledge letter is sent to the marriage registrar in the area where the husband lives for registration, the second and third sheets are given to the husband and wife respectively, and the fourth sheet is kept by the religious court.<sup>39</sup>

Based on the explanation of the divorce provisions as explained in the Marriage Law and the Compilation of Islamic Law, it can be concluded that a divorce can be terminated for three reasons, namely: death, divorce, and a court decision. Meanwhile, regarding the imposition of talaq, it is explained that divorce can only be carried out through certain processes, such as having to make a request and be carried out in front of a court session with clarity and reasons.

Furthermore, regarding the imposition of talaq via electronic media, it can be understood about its validity through the Marriage Law and the Compilation of Islamic Law.<sup>40</sup> As in the provisions of article 39 of Law no. 1 of 1974 concerning marriage, article 65 of Law no. 7 of 1989 concerning Religious Courts, and article 115 of the Compilation of Islamic Law which explains that divorce can only be carried out through a court hearing process and carried out in front of a court session.<sup>41</sup>

Based on the provisions above, divorce via electronic media in positive law is invalid, because divorce via electronic media is carried out outside a court hearing and

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<sup>37</sup> Ahmad Syaifuddin Al Rosyid and Ahdiyatul Hidayah, "Muhammad Abu Zahrah's Istibat Method on the Law of Isbat Nasab Son of Zina Based on the Ilhaq Method. An-Nisa': Journal of Gender Studies, Vol. 16, no. 1 of 2023, p. 93 - 108.

<sup>38</sup>Zahir, Irham. "Comparative Analysis of Talaq That Passed Outside The Court In The Perspective Of Islamic Law And Compilation Of Islamic Law." *Jurnal Al-Dustur* Vol 3, No. 2 Tahun 2020

<sup>39</sup> Ahmad Jamaludin, "The Problems with the Cancellation of the Pledge of Talaq in Religious Courts." *Proceedings of the First International Conference on Technology and Educational Science, ICSTES* 2018, p. 21-22 2018.

<sup>40</sup>Mukhammad Nur Hadi. "Conservative Muslim on the Screen: The Narrative of Islamic Family Law in Indonesian Films." *Al-Ahwal: Jurnal Hukum Keluarga Islam* Vol. 14, No. 2 Tahun 2021, p. 133-145.

<sup>41</sup> Enceng Iip Syaripudin Dahwadin, Eva Sofiwati, and Muhamad Dani Somantri. "The Nature of Divorce Based on Islamic Law Provisions in Indonesia." *JUDISIA J. Thinker. Huk. and Huk. Islam* Vol. 1 1, No. 1 of 2020. p. 87.

does not comply with the provisions determined by the laws in force in Indonesia.<sup>42</sup> This rule was created to avoid treatment arbitrary, especially from the husband's side, which could be with at will throwing away the wife without a valid reason.

Divorce carried out in front of court is more secure conformity with Islamic guidelines. Because before there is a decision, First, research is conducted on whether the reasons are sufficient strong for happen divorce between husband wife, unless li is possible court Act as *Hakam*. With process court Which complicate things and tighten reasons divorce, so divorce in in front of the court the court can Also zoom out amount divorce.<sup>43</sup>

So it can be concluded that in dropping Divorce must fulfill certain conditions and also the right to divorce does not fully become right husband. Constitution Also give chance for Woman For submit lawsuit to court. This is done to protect women's rights from arbitrariness.

## 2. Divorce Through Electronic Media Reviewed from a Legal Perspective Islam

When somebody mental his wife through tool communication, like cell phone or telephone, problem Which happen is husband do divorce without witness. Husband call his wife And There was a conversation, then the husband shouted at his wife.<sup>44</sup> So only they together Which hear. Exception If load speaker activated, so there are several people who hear the talak from husband. Haronzah stated in his journal that social media can strengthen ties between old friends through available applications, can increase income through commercial media applications, as a means of conveying knowledge, as a reference for science and knowledge, a place to channel aspirations and as a medium to open awareness about the state of the environment, environment as well as a means of motivation.<sup>45</sup>

Cleric agreed, divorce with writing the law legitimate. Because writing consists from Lots letter Which Can understood meaning as *talak*. So that value the same with saying. Beside that, writing represent saying person Which write. With postulate, Prophet Mohammed ordered to distribute the minutes. And it sometimes he convey with saying and sometimes with writing letter.<sup>46</sup>

There are differences among scholars regarding divorce done through media social. Majority *jumbur* cleric punish legitimate However with several conditions. *Istinbat* method or rules of *ushul fiqh* used in punish its legal divorce through media electronic is with qiyas. As for qiyas interpreted as measuring something with something similar. Shadr Ash-Sharia defines qiyas as the transfer of *ashl* to *funu'* based on '*illat* Which No can understood. Whereas Al-Human

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<sup>42</sup>Lili Rasyidi, *Marriage and Divorce Law in Malaysia and Indonesia*, (Bandung: Teen Rosdakarya, 1991), p. 194.

<sup>43</sup>Atho Mudzar, *Reading the Waves of Ijtihad: between tradition and liberation*, (Yogyakarta: Titian Divine Press, 1998), p. 181-182.

<sup>44</sup>Ahdiyatul Hidayah, and Ahmad Bunyan Wahib. "Defending Women's Legal Rights through Organizations in Turkey." *An-Nisa': Journal of Gender Studies* Vol. 15, No. 2 Tahun 2022. p. 185-200.

<sup>45</sup>Haronzah, Muhammad Fairman, Inthiran Mani, Wan Hassan Wan Embong. "Social Media and Facebook According to Islam." *Journal of Islamic Law and Humanitarian Discourse*. Vol. 13, No. 1. 2019. p. 16-27.

<sup>46</sup>*A l-Mausu ' ab al-Fiqhiyah al-Kuwaitiyah*, (Beirut: Darul Subu al Ilmiyah, 2020), p. 216.

explained that qiyas is legal equality of a case with case another Because there is a similarity of 'illat.<sup>47</sup>

It's legal divorce through media on line Also can done with road ijthad. Like Which explained *Hafidbul Umami* in the journal that divorce through media social allowed with 3 road Ijthad.<sup>48</sup>

Apart from allowing mental behavior via social media, there are: a number of opinion Which say makruh or more Good abandoned. Matter This be delivered by chaplain Abdul Shomad. Rule Which used is "If A proposition contain *ibtimal* (possibilities understanding) so cancel it postulate with that postulate". This is a form caution in analyze law. Then continue by Desi Asmaret in his study that it is better to divorce legally electronic media is avoided. This is intended to reduce action condescending Woman And impact negative other. As for rule *ushuliyah* Which used is "*Law it follows benefit Which most Lots*".<sup>49</sup>

According to Islamic fiqh, talaq is considered valid and talaq occurs if it has fulfilled the pillars and conditions of talaq. And it is required that in talaq some of it is related to the husband, some is related to the wife, and some is related to the sighah.

Conditions in the talaq lafadz: talaq is considered valid if:

1. The lafadz that is spoken is a lafadz that is related to *sharib lafadz* or *kinayah lafadz*.
2. There is clarity in the speech stating divorce.<sup>50</sup>

So it can be seen that divorce on social media can be punished legal or makruh, each of which has its own rules used. So it is necessary to be careful in the act of divorce, start from intention in do until method which used in mental.

## CONCLUSION

Divorce is permissible in Islam because the dynamics of household life sometimes lead to something that is contrary to the purpose of forming a household. And this is also a legal action that is justified by religion in emergency situations that can be taken by husband and wife if the marriage bond can no longer be maintained and continued. The laws of Talak in the Islamic religion are haram, makruh, obligatory and circumcision. And the law of giving divorce to a wife via electronic media or social media, some scholars allow it using the qiyas or ijthad method. The ijthad method used is qiyas, which is to express divorce in writing with an ordinary letter. Apart from that, there are laws that are makruh or better abandoned. The method used is the ijthad method. Apart from that,

<sup>47</sup>Rachmat Syafe'I, *Ilmu Ushul fiqih*, (Bandung: Pustaka Setia, 2015), p. 86-87.

<sup>48</sup> Ibid. Nurul Aini, "Perlindungan Hak Anak Dalam Perkawinan Poligami Di Indonesia," *Journal de Jure* 9 (2017); Noor Efendy, Ahmadi Hasan, and Masyithah Umar, "Membangun Hukum Yang Adil Dalam Bingkai Moralitas Pancasila," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 1, no. 4 (December 15, 2023): 656–78; Rabi'ah Adawiyah Phonna Effendy Jaraputri et al., "Legal Consequences For A Notary Public With Double Professions As A Rector Of A Private University Based On Law On Office Of Notary Public," *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 1 (June 26, 2023): 25–35, <https://doi.org/10.18592/sjhp.v23i1.8611>.

<sup>49</sup>Mohammad Noor, "The Concept of Divorce in a State of Anger from the Perspective of Ibnu Qoyyim Al-Jauzi", *Journal of Humanities*, Vol. 2, No.1 of 2016. p.7.

<sup>50</sup> Abdurrahman Al Jazairi, *Fikih Ali Mazhab Al Arba'ab* (Beirut: Dar Ibn hazm, 2010), p. 970-973.

the *ushuliyah* rule used is “The law follows the greatest benefit”, considering that there are several negative impacts of online talak, such as degrading women.

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