



## ANALYSIS OF THE VALIDITY OF DIVORCE THROUGH SOCIAL MEDIA FROM THE PERSPECTIVE OF KITABUN NIKAH AND INDONESIAN POSITIVE LAW

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### Abstract

This study analyzes the validity of divorce conveyed through social media from the perspective of Kitabun Nikah and Indonesian positive law. In Islam, marriage is a very strong contract, but problems in the household can lead to divorce. Talak, as an act of the husband dissolving the marriage bond, can be done verbally or in writing. In the digital era, social media such as WhatsApp, Facebook, and others have become common means of communication, including to convey divorce. The Kitabun Nikah recognizes written divorce under certain conditions, while Indonesian positive law, especially Law No. 1 of 1974 and the Compilation of Islamic Law (KHI), requires that divorce must be carried out in front of the Religious Court. This research uses a descriptive analysis method with a qualitative approach to examine the views of the two legal systems. The results show that although in Islamic fiqh divorce through social media can be considered valid under certain conditions, Indonesian positive law does not recognize it if it is not done in front of the court. This creates a mismatch between the practice of religious law and state regulations, resulting in the inability of couples to remarry or claim rights after divorce. Therefore, harmonization efforts between the two legal systems are needed to accommodate the interests of the community and ensure the public good.

**Keywords-** Talak, Social Media, Kitabun Nikah, Indonesian Positive Law

### Abstrak

Penelitian ini menganalisis keabsahan talak yang disampaikan melalui media sosial dari perspektif Kitabun Nikah dan hukum positif Indonesia. Dalam Islam, pernikahan merupakan akad yang sangat kuat, namun permasalahan dalam rumah tangga dapat berujung pada perceraian. Talak, sebagai tindakan suami yang membubarkan ikatan pernikahan, dapat dilakukan secara lisan maupun tulisan. Di era digital, media sosial seperti WhatsApp, Facebook, dan lainnya telah menjadi sarana komunikasi yang umum digunakan, termasuk untuk menyampaikan talak. Kitabun Nikah mengakui perceraian secara tertulis dengan syarat-syarat tertentu, sedangkan hukum positif Indonesia, khususnya UU No. 1 Tahun 1974 dan Kompilasi Hukum Islam (KHI), mensyaratkan perceraian harus dilakukan di depan Pengadilan Agama. Penelitian ini menggunakan metode analisis deskriptif

dengan pendekatan kualitatif untuk mengkaji pandangan kedua sistem hukum tersebut. Hasil penelitian menunjukkan bahwa meskipun dalam fikih Islam perceraian melalui media sosial dapat dianggap sah dengan syarat-syarat tertentu, namun hukum positif Indonesia tidak mengakuinya jika tidak dilakukan di depan pengadilan. Hal ini menimbulkan ketidaksesuaian antara praktik hukum agama dan peraturan negara, yang berakibat pada ketidakmampuan pasangan untuk menikah kembali atau menuntut hak setelah perceraian. Oleh karena itu, diperlukan upaya harmonisasi antara kedua sistem hukum tersebut untuk mengakomodir kepentingan masyarakat dan menjamin kemaslahatan umum.

**Kata Kunci-** Talak, Media Sosial, Kitabun Nikah, Hukum Positif Indonesia

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## INTRODUCTION

Article 2 of the Compilation of Indonesian Islamic Law states that marriage according to Islamic law is a very strong contract or *mitsaaqan ghaalidzan* to obey Allah's commands and carry it out as a form of worship. Therefore, a paradigm emerged in Islam that marriage is a sunnah of the Prophet which is highly recommended to be implemented. In fact, if it has been implemented, marriage is considered to have completed half of the religion.<sup>1</sup>

A lasting household until death do us part is the goal and hope of every married person. However, in a marriage there are problems that hit either from the personal factors of the person undergoing the marriage or the interference of a third person. In general, married couples will try to solve these problems as best they can. However, sometimes a problem cannot be resolved properly, leading to a household rift and causing it to be unable to avoid divorce.

The breakup of a marriage can occur for various reasons, one of which is due to divorce. Talak is an act of a husband who releases the bond of marriage with his wife by using certain words.<sup>2</sup> This divorce can be conveyed orally or in writing and clearly or figuratively.

Information technology and communication media continue to develop rapidly, deepening cultural acculturation. John Naisbitt in his book "*High Tech, High Touch; Technology and Our Search for Meaning*" (1999) describes how society is increasingly plunged into what he calls the "technology hangover zone". This phenomenon is characterized by a number of sociological symptoms, such as: we tend to seek instant solutions to various problems, ranging from religious to nutritional; we fear and worship

<sup>1</sup> Geubrina Razeki, "Hukum Menjatuhkan Thalaq Melalui Tulisan Menurut Pendapat Ibn Hazm," *Universitas Islam Negeri Sumatera Utara* 4, no. 1 (June 2019): 44.

<sup>2</sup> Rusli Halil Nasution, "Talak Menurut Hukum Islam," *Sekolah Tinggi Agama Islam Tebing Tinggi Deli* 3, no. 2 (June 2018): 707.

technology at the same time; the boundaries between real and fake are increasingly blurred; violence is often considered a natural thing; we feel attached to technology like with toys; and we often feel isolated and disconnected from reality. The utilization of various internet communication media, which we know as Social Media (medsos), allows people to interact with each other without ever meeting in person. Social media such as text messaging (SMS), Facebook, Instagram, TikTok, and WhatsApp are the most popular used today around the world. However, the use of social media also often raises controversial issues, including in the context of divorce. Although the phenomenon of divorce via SMS or social media is not yet very popular in Indonesia, it is starting to spread and generate attention. The views of feminists and women's organizations have not been heard much about this. Therefore, it is necessary to conduct in-depth research on the validity of divorce or pronouncement of divorce through social media.<sup>3</sup>

## RESEARCH METHODS

The method used in this research is *library research*, which is a method of collecting data by studying and understanding theories from various literatures relevant to the research. According to Zed (2004), there are four stages in a library study: preparing the necessary equipment, compiling a working bibliography, organizing time, and reading and recording research materials. Data collection is done by searching and compiling information from various sources such as books, journals, and previous studies. Literature materials obtained from various references were then analyzed critically and in depth.

## DISCUSSION

### A. Kitabun Nikah's View on Talak

برمول شرط صح طلاق ایت لیم شرط  
فرتام هندقله یع منطلاق ایت سوده بالغ . ادفون جك بلوم بالغ مك تبادلہ صح طلاقن  
شرط یفكدوا هندقله اي عاقل مك تیاد صح طلاق اورغ کیلا  
شرط یغ کتیک هندقله ادا یغ منطلاق ایت دغن اختیارن مك تیاد صح طلاق اورغ یغ ترلنجور  
لیداهن فد منطلاق استرینن  
شرط یغ کأمفة هندقله تاهو یغ منطلاق ایت اکن ارتی طلاق یایت لفس درفد جدی استرینن  
شرط یغ کلیم جاغن دنگاهی اورغ اتس منطلاقدی مک تیاد صح طلاق اور غ یغ دنگاهی اورغ  
اتسن  
برمول صح طلاق دغن تعلیق سفرتی برکات سوامین اکن استرینن جك اغکو نایک کرومه ایت  
او کرومه تر طلاقه اغکو؛ مک افبیل نایک فرمفوان ایت کرومه ایت نسچای جاتهل طلاقن  
سفرتی دمکین ایت

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<sup>3</sup> Desi Asmaret, "Perceraian Melalui Media Sosial (Medsos)," *Universitas Muhammadiyah Sumatera Barat* XII, no. 6 (July 2018): 64–65.

برمول طلاق ایت دوا بهاگی: فرتام طلاق صریح نماں، کدوا طلاق کنایہ نماں. مک طلاق صریح ایت سفرتی کات سوامین اکن استریں: "اکو طلاقہ اکندیکاو اتو کولفسکن اکندیکاو اتو کو چر یکنله اغکو درفد اکو"؛ مک گوگورله طلاقن اکن استریں، دان جک دغن لفظ لیداهن جوا تیاد بسرت نية دالم هاتین سکالفون. ادعون طلاق کنایہ مک تایت سفرتی کات سوامین: جوا هکنله دیریم درفد اکو، اتو فوتوسله اغکو درفد اکو، اتو رسائله لاکي ۲ لاین درفد اکو". مک سکلین الفظ کنایہ ایت تیاد جاتوه طلاق دغندی ملینکن افبیل نسرت دغی نية طلاق دالم هاتی برمولى جک برکات سوامی اکن استریں: کو طلاقه اتو تاغنمو اتو جاریمو اتو سوسمو اتو ماتمو اتو تلیغامو اتو هیدوغمو اتو فرجمو "مک گوگورله طلاق ساتو، دان جک دوا کالی ای برکات سفرتی دمکین ایت گوگورله طلاق دوا، دان جک تیک کالی ای مغات گوگورله طلاق تیک برمولى جک برتاش سوراغ فد سوراغ ادا که باکیمو استری، مک جوابن تیاد ادا باکیکو استری. مک اقبیل اداله باکیش استری جاتوهله ساتو طلاق باکیش فد استریں ایت کرن ای برسند ۲ کن شرع دغن دوستاش. دان جکالو برتاش سوراغ باگی سوراغ سوده اغکو طلاقه استریمو، مک جوابن بهکن اتو سوده؛ جاتوهله طلاقن ساتو دان جک نیاد دغن لفظ طلاق سکالفون برمولى طلاق ایت دوا باگی فول: فرتام طلاق باین نماں، کدوا طلاق رجعی نماں ادفون طلاق باین ایت دوا باگی: فرتام باین صغری، کدوا باین کبری ادفون طلاق باین کبری ایت مک بایت طلاق تیک، مک مراد درفد باین کبری ایت بهوا تیاد بوله کمبالی ای کفد استریں ایت ملینکن دغن نکاح درفد برچین بوت

The Kitabun Nikah does not explicitly explain divorce through social media. However, if it is examined in the divorce section, namely sharih and kinayah, it can be interpreted that any word that refers to divorce, whether conveyed clearly or figuratively, as long as the husband has the intention to divorce his wife, the divorce is considered to have fallen, otherwise if the husband does not have the intention to divorce his wife, the divorce does not fall.<sup>4</sup> For this opinion, there are some scholars who agree and some who disagree.

## B. Indonesian Positive Law Governing Talak

Indonesia is a nation state that consists of various religions and has various kinds of applicable laws such as positive law, religious law, and customary law. But in the various rules of law that apply and are used, the law that applies to everyone is positive law. As for religious matters, it is left to each individual, as good citizens in addition to obeying religion we are also required to obey the applicable rules and regulations, including in the case of marriage, which in fact is more dominant to religion. Moreover, Indonesia is not a secular state, but also a religious state that accommodates matters relating to religious affairs, one of which is in terms of marriage and divorce.

<sup>4</sup> Sheikh Muhammad Arsyad Al-Banjari, *Kitabun Nikah*, 46-48.

Speaking of divorce, there are two binding laws in Indonesia, namely Marriage Law No. 1 of 1974 and the Compilation of Islamic Law which is the result of Presidential Instruction . No. 1 of 1991. This applicable Marriage Law is not only intended for Muslims. But this law is used for all religious people in Indonesia. Meanwhile, KHI is more specific as a material law for Muslims in dealing with Islamic civil matters in the Religious Court (PA).

In Jurisprudence, divorce is called talak or furqah, which means breaking the bond, canceling the agreement, while furqah means divorce, which is the opposite of gathering. Then the two words are used by Jurisprudence experts as one term, namely divorce. According to Subekti, divorce is the abolition of marriage by a judge's decision or the demands of one of the parties to the marriage. In line with the understanding expressed by Subekti, PNH. Simanjuntak also has the opinion that divorce is the termination of a marriage for a cause by a judge's decision on the claim of one of the parties or both parties to the marriage. So, based on the brief description above, it can be seen that divorce or dissolution of marriage can occur due to several things, namely:

1. Death of one of the spouses
2. Divorce (talaq and/or khulu') and
3. Court decisions are based on procedural and regulatory mechanisms that must be carried out. This is based on Marriage Law Number 1 of 1974 which is mentioned in general in Article 28.<sup>5</sup>

In Government Regulation No. 9 of 1975 concerning the Implementation of the Marriage Law based on Article 38 of the Marriage Law, divorce can only be carried out in front of a court session after the court concerned has tried and failed to reconcile. Divorce is part of marriage, so divorce is always regulated by marriage law<sup>6</sup>. This is in accordance with the teachings of Islamic Law which has the principle that make marriage easy and divorce difficult, one of the principles in the Marriage Law is to make divorce difficult, how to make this difficult, among others, by setting certain conditions such as the divorce vow must be pronounced in front of a court session. This policy is elaborated by the judge, among others, by holding several hearings, to explore the problems and give the husband and wife the opportunity to reflect on their intention to divorce.<sup>7</sup>

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<sup>5</sup> Hasmiah Hamid, "Perceraian dan Penanganannya," *Jurnal Ilmiah Wahana Pendidikan* 4, no. 3 (December 2018): 25.

<sup>6</sup> Iba Banaesa, "Perkembangan perceraian di Indonesia.," *UIN Sunan Gunung Djati Bandung*, Juli 2022.

<sup>7</sup> Miftahul Jannah, "Tinjauan Hukum Islam Dan Hukum Positif Terhadap Cerai Tanpa Putusan Pengadilan Agama," *ISTI'DAL: Jurnal Studi Hukum Islam* 8, no. 2 (December 2021): 189.

Divorce law for Muslims in Indonesia is regulated in several laws, namely:<sup>8</sup>

- 1) Law Number 1 of 1974 concerning Marriage Law in Indonesia.  
Article 39: Divorce can only be carried out in front of a Court session after the Court concerned has tried and failed to reconcile the two parties.
- 2) Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974  
Article 14: Divorce is a divorce granted by the husband before the Court in accordance with Islamic law.
- 3) Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law in Indonesia.  
Article 117: "Divorce is the husband's vow before the Religious Court which is the cause of the dissolution of marriage".  
Article 129: "A husband who wishes to divorce his wife shall submit an oral or written request to the Religious Court in whose jurisdiction the wife resides, accompanied by reasons, and request that a hearing be held for that purpose".

Based on the above articles, it can be seen that a divorce recognized by the state is valid if it is carried out in front of a Religious Court session and must also be in accordance with Islamic law. So if it is not carried out in front of a Religious Court session, it is not valid even though it is legal according to Islamic Law. This dualism in the implementation of divorce will also affect the implementation of Iddah (waiting period) for the wife to be able to remarry another man.

### **C. Provisions in the Kitabun Nikah and Indonesian Positive Law Related to Talak**

In Kitabun Nikah, the conditions for the validity of divorce are five, namely that the divorcee is pubescent, has the right mind, is deliberate so that the divorce is not valid for a person who slips his tongue divorcing his wife, the divorcee should understand the meaning of divorce, and finally not by force.

Kitabun Nikah divides divorce into two types, sharih and kinayah. The former is when the divorce uses words whose meaning clearly indicates the word divorce or its equivalent, such as the word divorce. While kinayah is a form of divorce that uses figurative language, but has a correlation of meaning with the meaning of divorce, for example, go home to your parents.

The first type of divorce, even without the intention of divorce, will fall as thalaq. The second type must be done with the intention of divorcing the wife. In terms of the number of divorces, there are two types of divorce: raj'i and bain. Raj'i is divorce in the first and second divorce. Meanwhile, bain is the third form of divorce. The husband, in a raj'i divorce, still has the right of reconciliation as long as

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<sup>8</sup> Qurrotul Ainiyah dan Imam Muslih, "Dilema Hukum Keluarga Di Indonesia (Studi Analisis Kasus Perceraian Di Indonesia)," *Jurnal Istiqro: Jurnal Hukum Islam, Ekonomi dan Bisnis* 6, no. 1 (January 2020): 75.

the wife's iddah period has not expired. While in bain divorce, it must be with a new marriage plus certain requirements. Talak bain is divided into two, namely, kubra and sughra. The first is the form of divorce that the husband imposes the third time. The second can be the first or second divorce, but has a special cause, namely because of khulu' and because of apostasy.<sup>9</sup>

Meanwhile, the provisions of divorce in positive law in Indonesia, namely in the provisions of legislation, divorce must be carried out in front of a Religious Court session. Article 39 of Law Number 1 of 1974 concerning marriage consists of 3 (three) paragraphs, namely:

- 1) Divorce can only be carried out in front of a court session after the court concerned has tried and failed to reconcile the two parties.
- 2) There must be sufficient grounds for divorce that the husband and wife will not be able to live together as husband and wife.
- 3) The procedure for divorce before the court is regulated in separate laws and regulations.

The above is in line with the provisions of Law No. 7 of 1989 concerning Religious Courts, in article 65 stating that divorce can only be carried out in front of a court session after the court has tried and failed to reconcile the two parties.

The pledge of divorce outside the Religious Court still occurs in the community with various reasons for the perpetrators, while what happens with the application of Article 39 paragraph 1 is that the pledge of divorce that occurs outside the Religious Court is not recognized / invalid under state law. Implicitly, Article 39 of Law No.1 of 1974 concerning marriage and Article 65 of Law No.7 of 1989 concerning Religious Courts are felt to be contrary to Article 2 of Law No. 1 of 1974 concerning marriage which states that marriage is valid, if it is carried out according to the laws of each religion and belief, because however divorce is still within the scope of marriage, and there would be no divorce if there was no marriage. With the restrictions imposed by Law No.1 of 1974 article 39 and Law No.7 of 1989 article 65, there is a lack of synchronization between Islamic law and the legislation in force in Indonesia.

With the existence of these contradictions, of course, it creates an imbalance that is felt by the community. Because the pledge of divorce outside the Religious Court is not recognized by the state, it will cause problems for the husband and wife themselves, namely; each party, either husband or wife, cannot remarry officially; and the wife cannot claim her rights. So in order to have legal force and be recognized by the state, the pledge of divorce outside the court must be submitted to the Religious Court.

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<sup>9</sup> M. Fahimul Fuad, "Nomenklatur Pemikiran Hukum Syaikh Arsyad Al-Banjariy (Studi atas kitab an-Nikah Karya al-Banjariy)" IV, no. 2 (2013).

Filing a divorce trial process requires time and money, which is sometimes used as an excuse to divorce outside the Religious Court, so that many also take the shortcut of conducting a sirri marriage, because of their unwillingness to comply with these laws and regulations, which also means a violation of Law No.1 of 1974, because they do not register their marriage.<sup>10</sup>

The provisions of divorce in the Kitabun Nikah and positive law in Indonesia show some fundamental differences, although there are some similarities in terms of basic principles. In the Kitabun Nikah, divorce must fulfill five conditions of validity, namely that the divorcee must have reached puberty, be of sound mind, be intentional, understand the meaning of the divorce, and not be forced. Talak is divided into two types: sharih (with clear words) and kinayah (with figurative language), and two categories of numbers: raj'i (first and second divorce that allows reconciliation) and bain (third divorce or divorce with special cause). Meanwhile, positive law in Indonesia, as stipulated in Law No. 1 of 1974 and Law No. 7 of 1989, requires that divorce can only be carried out in front of a Religious Court session after attempts to reconcile the two parties have failed. This is different from Islamic law which allows divorce to be done outside of court.

The provisions in the Kitabun Nikah are more in-depth on the law and application of divorce, while Indonesian positive law is more strict and formal, requiring the divorce process to go through the courts to be valid in the eyes of state law. This discrepancy often leads to unprofitability, such as the inability to legally remarry or claim rights after an out-of-court divorce. While there is agreement in principle that divorce must meet certain conditions, the formal procedures in Indonesia are not in line with the practices in Kitabun Nikah, indicating the need for harmonization efforts between the two legal systems to accommodate the interests of communities that uphold their religious laws.

#### **D. Views of Kitabun Nikah and Indonesian Positive Law Regarding the Validity of Talak Through Social Media**

A husband divorces his wife through social media such as telephone, Facebook, YouTube, SMS (Short Message Service), WhatsApp, or Instagram. The problem is that the husband divorces without witnesses. The husband contacts his wife through social media and a conversation takes place, then the husband conveys the divorce to his wife. As a result, only the two of them hear the conversation, unless the *loudspeaker* is activated so that several other people can hear the divorce from the husband. Divorce through social media is categorized as divorce by writing. In fiqh, divorce by writing is also called at-talaq bi al-kitabah. Muhammad bin Yahya bin Hasan an-Najmi, an expert member of the International

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<sup>10</sup> Republik Indonesia, UU No. 1 Tahun 1974, *Tentang Perkawinan* (Surabaya: Pustaka Tinta Mas, 1986).



Islamic Fiqh Committee in Jeddah, in his book entitled "Hukm Ibram 'Uqud al-Ahwal as-Shakhsyiyah wa al-'Uqud at-Tijariyyah ibra al-Wasail al-Elektroniyyah," argues that the scholars differ in opinion regarding the ruling on divorce imposed through writing.<sup>11</sup>

The opinion that divorce in writing is invalid (haram) is shared by a small minority of scholars and the Azh-Zhahiri school. According to Ibn Hazm, a husband who divorces his wife in writing does not have any effect. The main reason is because in the Qur'an, the form of expressing divorce must be done orally, not in writing. Therefore, the law of using writing such as SMS (Short Message Service) and other social media to divorce according to Ibn Hazm is invalid. This method is considered contrary to Allah's command in the Qur'an, so if done, the divorce from the husband to the wife does not occur.<sup>12</sup>

The istinbat method used by Ibn Hazm is based on the evidence contained in the Qur'an surah Al-Baqarah verse 229:

أَوْ تَسْرِيحٌ بِإِحْسَانٍ وَلَا يَجِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا فِيمَا سَأَلْتُمُوهُنَّ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ  
خَفِيَّةٍ إِلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ لَا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ أَنْ يَخَافَا  
اللَّهُ فَلَا تَعْتَدُوا هَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ

*"The (reconcilable) divorce is two times. (After that the husband may) retain (reconcile) in a proper manner or release (divorce) in a good manner. It is not lawful for you to take back anything (of dowry) that you have given them, unless both (husband and wife) fear that they will not be able to observe the limits prescribed by Allah. If you (the guardians) fear that they will not be able to observe the limits of Allah, then there is no blame on either of them for the payment (to be made) by the wife to redeem herself. These are the limits of Allah, do not transgress them. Whoever transgresses the limits of Allah, they are the wrongdoers."*

Based on this verse, Ibn Hazm understands that the divorce that can be reconciled is twice. After that, it is allowed to reconcile or divorce in a good way. On the face of it, the text does not prohibit or allow divorce through writing or texting. According to Ibn Hazm, istinbat can be done with al-dalil when no clear ruling is found in the Qur'an or saheeh hadith.

There are several scholarly opinions that state the validity of divorce done through writing. According to Ahmad Zahro, divorce done through electronic

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<sup>11</sup> Fadli Dwi Permana Putra, "Penjatuhan Talak Melalui Media Online Ditinjau Dari Hukum Islam Dan Undang-Undang Perkawinan" (Surakarta, Universitas Muhammadiyah Surakarta, 2020), 7–8.

<sup>12</sup> M. Irfan Syaifuddin, "Keabsahan Talak Melalui Media Sosial Perspektif Hukum Islam," *Institut Agama Islam Negeri Surakarta* 5, no. 2 (October 2020): 144–45.

media is considered the same as divorce through writing and is valid. However, there are several conditions that must be met, namely:

- 1) The husband who divorces his wife must be a mukallaf.
- 2) There must be an intention from the husband to divorce the wife, even if it is not expressed verbally.
- 3) The divorced wife is the spouse of a valid marriage.
- 4) The writing must contain the meaning of divorce so that the meaning of the writing is easily understood.
- 5) There must be two fair witnesses.

Article 117 of the Compilation of Islamic Law (KHI) Talak is a husband's pledge before a Religious Court session which is one of the causes of marriage breakdown, in the manner referred to in articles 129, 130, and 131.<sup>13</sup> Article 39 paragraph (1) of Law No. 1 of 1974 reads, "Divorce can only be carried out before a Court Session after the Court concerned has tried and failed to reconcile the two parties."<sup>14</sup>

The legal status of divorce through social media shows that although the development of information technology has facilitated communication in the modern era, its use to end household relationships by imposing divorce is considered problematic. Divorce through social media is considered to be an arbitrary act on the part of the man against the woman. This method is also seen as inhumane, especially in terms of respect for women, and does not reflect the aspects of benefit in accordance with the principles of shari'a enforcement, where the law must show benefit. To safeguard these interests, the policy formulated by the government regarding the regulation of the pledge of divorce that must be read before a court session is considered appropriate. This policy aims to provide legal protection and ensure the principle of equal rights for married couples in terms of divorce and its legal effects. The legal formulation that requires the pronouncement of divorce before the court has significant relevance to the values of benefit that must be realized. This is in line with the rule that *"The actions or policies of a leader towards the people he leads must be related to the benefit."*<sup>15</sup>

Although in the view of the jumhur ulama, divorce through social media is permitted and considered valid, in the context of life in Indonesia, which adheres to the rule of law, divorce must be pronounced before the court to ensure legality and validity. This is in line with the principle that divorce is an action that must be given a narrow space and done carefully. The necessity of divorce before a religious

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<sup>13</sup> Presiden Republik Indonesia, *Kompilasi Hukum Islam* (Jakarta, 2014).

<sup>14</sup> Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan* (Jakarta, 1974).

<sup>15</sup> Ahmad Ropei dan Ramdani Wahyu Sururie, "Dinamika Penjatuhan Talak Melalui Whatsapp Dalam Paradigma Pembaharuan Hukum Keluarga Islam," *The Indonesian Journal of Islamic Family Law* 11, no. 1 (June 2021): 179–80.

court aims to create a peaceful, safe, orderly and prosperous life, in line with the spirit that Islam is a religion of mercy capable of providing benefits. Therefore, although some fiqh scholars state that divorce through writing, whether through letters, social media, or other communication applications, is valid, this view is not relevant to the efforts to realize the values of benefit in modern life. This view is also not in line with the principle of family law reform in the field of divorce, which is oriented towards achieving *maslahat* and rejecting harm.<sup>16</sup>

## CONCLUSIONS

Kitabun Nikah does not explicitly mention divorce through social media, but based on the explanation of *sharih* and *kinayah* divorce, divorce is considered valid if the husband has the intention to divorce his wife, even if it is not said directly. Scholars differ on this point; some agree that divorce through social media is valid, while others do not. This suggests the need for further interpretation in the modern context.

In Indonesia, the positive law governing divorce falls under the Marriage Law No. 1 of 1974 and the Compilation of Islamic Law (KHI) from Presidential Instruction No. 1 of 1991. Divorce, according to this law, is only valid if it is done in front of a Religious Court session after attempts to reconcile the two parties have failed. This positive law applies to all citizens, regardless of religion, and regulates divorce procedures with the aim of maintaining order and justice.

Talak in Kitabun Nikah is divided into *sharih* and *kinayah*, and by number into *raj'i* and *bain*. *Sharih* talak is valid even without intention, while *kinayah* talak requires intention. On the other hand, Indonesian positive law requires the divorce to be pronounced in front of the Religious Court to be legally valid. This discrepancy between the Kitabun Nikah and positive law often causes problems, especially in terms of divorce registration and recognition.

Views on divorce through social media vary. Some scholars consider it valid if it meets certain conditions, while others, such as Ibn Hazm, reject it because divorce must be pronounced orally. In the Indonesian context, although divorce through social media may be considered valid by some scholars, positive law requires divorce in front of a court for legality and legal protection. This is in line with the principle of benefit in Islam and aims to maintain justice and public order.

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<sup>16</sup> Ropei and Wahyu Sururie, 180-81.

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