

## **The Problems of Islamic Family Law in the Digital Era and Its Relevance to Renewal of the Compilation of Islamic Law**

*Ita Musarrofa*

Universitas Islam Negeri Sunan Ampel Surabaya, Surabaya,  
Indonesia

*itamusarrofa@uinsa.ac.id*

*Husnul Muttaqin*

Universitas Islam Negeri Sunan Ampel Surabaya, Surabaya,  
Indonesia

*husnulfikr@uinsa.ac.id*

*Ridha Amaliyah*

Beijing Foreign Studies University, Beijing, China

*ridha\_amaliyah@outlook.com*

### **Abstract**

The digital era raises various problems and challenges in Family Law which is still conventional. For example, in terms of marriage contracts and administration, utilisation of assets from the digital economy and so on. This study discusses the problems of Indonesian Islamic family law in facing changes in the digital era and its relevance to the renewal of the Compilation of Islamic Law. This study uses a netnography method with a normative legal approach. The results show several realities that are problems in Indonesian Islamic family law in the digital era such as online marriage, digital marriage dowry, online sexual relations between husband and wife, online nusyuz and zina, online divorce and reconciliation and joint property based on cyberspace. This situation demands a renewal of Islamic family law in Indonesia, especially the Compilation of Islamic Law



as material law in the Religious Courts. By using the feature of openness in the system theory of the *maqasid shariah*, the `urf of cyberspace is worthy of being used as a legal basis for the renewal of the Compilation of Islamic Law. Several articles in the Compilation of Islamic Law that need to be renewed are marriage witnesses, marriage contract, submission of dowry, husband's obligations, joint property of husband, reasons for divorce, examination of divorce lawsuits, procedures for reconciliation and procedures for implementing wills. This renewal is very important to achieve the objectives of the law, namely justice, certainty and legal benefits. This research contributes to lawmakers and law enforcers regarding various family law issues in the current digital era.

**KEYWORDS:** *Digital Era, Islamic Family Law, Renewal*

### **Abstrak**

Era digital memunculkan problem dan tantangan di bidang Hukum Keluarga Islam yang masih bersifat konvensional. Misalnya dalam hal akad dan administrasi perkawinan, pemanfaatan harta dari ekonomi digital dan lainnya yang terkait. Penelitian ini membahas tentang problematika hukum keluarga Islam di Indonesia dalam menghadapi perubahan di era digital dan relevansinya terhadap pembaharuan Kompilasi Hukum Islam. Penelitian ini menggunakan metode netnografi dengan pendekatan yuridis normatif. Hasil penelitian menunjukkan bahwa, beberapa realitas yang menjadi problem dalam hukum keluarga Islam di Indonesia pada era digital, misalnya pernikahan online, mahar perkawinan digital, hubungan seksual suami istri secara *online*, *nusyuz* dan zina secara *online*, talak dan rujuk secara *online* dan harta bersama berbasis dunia maya. Situasi tersebut mengharuskan adanya pembaruan hukum keluarga Islam di Indonesia, khususnya Kompilasi Hukum Islam sebagai hukum materiil di Pengadilan Agama. Dengan menggunakan fitur keterbukaan dalam teori sistem *maqasid shari'ah*, maka `urf dunia maya layak dijadikan dasar hukum untuk melakukan pembaruan Kompilasi Hukum Islam. Beberapa pasal dalam Kompilasi Hukum Islam yang perlu diperbaharui, yaitu: saksi nikah, akad nikah, penyerahan mahar, kewajiban suami, harta bersama suami, alasan-alasan perceraian, pemeriksaan gugatan perceraian, tata cara rujuk dan tata cara pelaksanaan wasiat. Pembaruan ini sangat penting untuk mencapai tujuan hukum yaitu keadilan, kepastian dan kemanfaatan hukum. Penelitian ini berkontribusi terhadap pembentuk undang-undang dan penegak hukum terkait dengan berbagai persoalan hukum keluarga di era digital saat ini.

**KATA KUNCI:** *Era Digital, Hukum Keluarga Islam, Pembaharuan*

## Introduction

The rapid development of information technology has given rise to a new social space that is artificial and virtual, known as cyberspace.<sup>148</sup> Cyberspace is a new imaginary space where humans can engage in any activity that can be done in the real world, such as conducting business, discussing, criticizing, expressing opinions, and even engaging in romantic relationships.<sup>149</sup> All interactions in this imaginary space can be facilitated using the advanced technology of information and computers.

The reality of the cyber world is a problem in itself in the field of Islamic family law. The ease of unlimited interaction carried out virtually raises several problems in the field of Islamic family law, which in some of its contracts requires physical presence and unity of the assembly.<sup>150</sup> Some of the legal issues in Islamic family law include online marriage contracts (ijab kabul) where the groom and the guardian (wali) are physically separated, the use of digital dowry (mahar) in marriage where the delivery is conducted online, virtual sexual relations between husband and wife, the economic potential in the digital era as maintenance (nafkah) and shared marital assets, online divorce (talak) and reconciliation (rujuk), and so forth.

Family law issues in the digital era are valuable notes that must be accommodated in renewing the Compilation of Islamic Law as material law in the Religious Court. Research on eight judges at the Religious Courts of Yogyakarta, Sleman, Wates and Bantul, shows that judges use the Compilation of Islamic Law as one of the bases for deciding cases and

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<sup>148</sup> Edward J Malecki, "Real People, Virtual Places, and the Spaces in Between," *Socio-Economic Planning Sciences* 58 (2017): 3–12, <https://doi.org/10.1016/j.seps.2016.10.008>.

<sup>149</sup> Uche M Mbanaso and Eman S Dandaura, "The Cyberspace: Redefining a New World," *IOSR Journal of Computer Engineering (IOSR-JCE)* 17, no. 3 (2015): 17–24; Yasraf Amir Piliang, "Masyarakat Informasi Dan Digital: Teknologi Informasi Dan Perubahan Sosial," *Jurnal Sositologi* 11, no. 27 (2012): 145.

<sup>150</sup> Ahmad Atif Ahmad, *Islamic Law: Cases, Authorities and Worldview* (Bloomsbury Publishing, 2017), 53.

other regulations.<sup>151</sup> The judges consider the Compilation of Islamic Law as a manifestation of the consensus of Indonesian scholars and living law in society.<sup>152</sup> However, is the Compilation of Islamic Law still relevant if there are family law issues in this digital era? For example, in terms of whether the judge will grant a divorce suit filed by a wife because she does not receive immaterial support from her husband who works far away, even though the husband feels that he has provided immaterial support via Skype, or whether the income of one of the spouses from the YouTube channel he created can be counted as joint property that must be divided in half when a divorce occurs?

The Compilation of Islamic Law was formed using Presidential Instruction Number 1 of 1991, and until now has never been changed.<sup>153</sup> Therefore, renewing the Compilation of Islamic Law material in the current digital era is necessary.

Studies on the Compilation of Islamic Law have been extensively conducted by researchers, focusing on both historical aspects and the substance of its articles. Siroj views the Compilation of Islamic Law as part of the historical transformation of Indonesian Islamic law, which was established during the New Order era and faced significant challenges during the Reformasi era, both from internal and external sources.<sup>154</sup> Researchers have also noted the need to update the articles within the Compilation of Islamic Law. This is evident in the work of Elimartati and Elfia, who highlight the provisions regarding joint property. They point out that using joint property to cover family expenses is not in sync with the husband's obligation to provide for the family. They propose adding a

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<sup>151</sup> Yulkarnain Harahap and Andy Omara, "Kompilasi Hukum Islam Dalam Perspektif Hukum Perundang-Undangan," *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 22, no. 3 (2010): 638, <https://doi.org/10.22146/jmh.16245>.

<sup>152</sup> Harahap and Omara, 640.

<sup>153</sup> Farantika Dwi Hardini, Rachel Ika Faudina, and Aulia Salsabila, "Tantangan Implementasi Hukum Islam Di Era Digital," *Tashdiq: Jurnal Kajian Agama Dan Dakwah* 4, no. 3 (2024): 51–60, <https://doi.org/10.4236/tashdiq.v4i3.3727>.

<sup>154</sup> A Malthuf Siroj, Ismail Marzuki, and Elkhairati Elkhairati, "Transformation and Future Challenges of Islamic Law in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 May (2023): 103, <https://doi.org/10.29240/jhi.v8i1.6618>.

regulation to Article 80 of the Compilation of Islamic Law concerning using property for family support.<sup>155</sup> The articles of the Compilation of Islamic Law, which represent a reform of Fiqh, have also been studied regarding their alignment with the *maqāṣid al-sharī'ah*. For example, Azhar conducted a study by interviewing intellectuals from Kerinci. According to them, the Compilation of Islamic Law holds urgency and relevance to the *maqāṣid al-sharī'ah*.<sup>156</sup>

The importance of *ijtihad* in the digital era is emphasized in an article by Asep Supriatna. He notes several developments in Islamic jurisprudence (*fiqh*) in the digital era, such as online fatwas and consultations, ethical considerations in using social media, cybersecurity, digital copyright issues, medical technology ethics, digital finance, and online medical issues. All of these realities necessitate the inevitability of *ijtihad*.<sup>157</sup> Long before the work of Supriatna, Muttaqin had also written about the importance of renewing Islamic jurisprudence (*fikih*) in the era of cyberspace. The future of *Fikih* will heavily depend on its ability to provide satisfactory definitions for all changes that occur, including the significant changes in the digital era.<sup>158</sup>

Several legal issues in Islamic family law related to the use of digital media have been studied, such as research on online matchmaking services using applications like Tinder and Mawaddah Indonesia. This research reveals the shift from offline to online matchmaking agencies in terms of their impact and legality.<sup>159</sup> Marriage contracts conducted via

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<sup>155</sup> Elimartati Elimartati and Elfia Elfia, "Kritik Terhadap Kompilasi Hukum Islam Tentang Ketentuan Harta Bersama Dalam Perkawinan," *Jurnal Ilmiah Syari'ah* 19, no. 2 (2020): 239.

<sup>156</sup> Azhar Azhar, "Islamic Law Reform in Indonesia from the Perspective of Maq Id Al-Shar 'ah: Kerinci's Intellectual Views," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (2024): 765, <https://doi.org/10.22373/sjhk.v8i2.15051>.

<sup>157</sup> Asep Supriatna, "Perkembangan Fikih Dalam Era Digital: Kajian Terhadap Metode Ijtihad Dalam Memahami Masalah Kontemporer," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 6, no. 1 (2024): 717–34, <https://doi.org/10.47467/as.v6i1.5478>.

<sup>158</sup> Husnul Muttaqin, "Urgensi Pembaharuan Fiqh Era Cyberspace," *Jurnal Hukum Islam Kopertais Wilayah IV Surabaya* 1, no. 1 (2009): 28.

<sup>159</sup> Regita Amelia Cahyani and Rizqa Febry Ayu, "Biro Jodoh Online: Kegunaan Dan Dampak," *JURIS (Jurnal Ilmiah Syariah)* 19, no. 2 (2020): 163–75, <https://doi.org/10.31958/juris.v19i2.2362>.

information technology from the perspective of *maqāṣid al-sharī'ah* according to Imam Ghazali's teachings. This research concludes that marriage contracts conducted using information technology media are legally valid.<sup>160</sup> A study has been conducted on cases of divorce (talak) via WhatsApp, utilizing an analysis of the jurisprudence of the four main schools of thought (mazhabs) and positive law in Indonesia. This research concludes that from the perspective of scholars adhering to the schools of thought, talak via WhatsApp is legally valid, being likened to talak through written communication. However, from a perspective of positive law, this form of talak is not considered valid as it is required to be carried out before a Religious Court.<sup>161</sup> The case of the waiting period (iddah) on Facebook and WhatsApp after the death of a spouse has been studied. Some studies examine the opinions of community figures regarding this issue,<sup>162</sup> while others analyze the motivations of widows using social media from the perspective of social action theory.<sup>163</sup>

Shared assets also pose a problem in the digital era regarding the utilization of the digital world to generate income, such as selling information through YouTube channels, TikTok, Facebook, Twitter, Instagram, or selling web hosting, Google AdSense, or even engaging in bitcoin mining. All economic activities in the virtual world can be considered shared marital assets that must be divided equally upon divorce.<sup>164</sup> The trend of dowry in the digital era is also highly diverse,

<sup>160</sup> Syaiful Alim, "Akad Nikah via Teknologi Informasi Perspektif Maqashid Syari'ah Imam Ghazali Dan Relevansinya Dengan Pembaruan Hukum Keluarga Islam," *Turatsuna* 4, no. 1 (2022): 61–81.

<sup>161</sup> Ahmad Ropei and Ramdani Wahyu Sururie, "Dinamika Penjatuhan Talak Melalui Whatsapp Dalam Paradigma Pembaharuan Hukum Keluarga Islam," *AL-HUKAMA: The Indonesian Journal of Islamic Family Law* 11, no. 1 (2021): 168, <https://doi.org/10.15642/alhukama.2021.11.1>.

<sup>162</sup> Anis Muflikah, "Penggunaan Sosial Media Facebook Dan Whatsapp Oleh Wanita Masa 'Iddah Wafat (Perspektif Tokoh Masyarakat Kabupaten Demak)" (Universitas Islam Sultan Agung, 2021).

<sup>163</sup> S H Khiyaroh, "Penggunaan Media Sosial Saat Masa 'Iddah Dan Ihdad (Studi Kasus Janda-Janda Aktif Menggunakan Facebook Saat Masa 'Iddah Dan Ihdad)" (UIN SUNAN KALIJAGA YOGYAKARTA, 2020).

<sup>164</sup> Ita Musarrofa et al., "Sociological-Normative Analysis of The Provision of Joint Property in The Cyber Era," *Indonesian Journal of Interdisciplinary Islamic Studies (JIIS)* 5, no. 2 (2022): 44–64, <https://doi.org/10.20885/ijiis.vol.5.iss2.art3>.

ranging from the use of Gopei balance, bitcoin, Google AdSense, and unlimited hosting as marriage dowries. These dowries are considered valid because they indeed have a commercial value, although for Google AdSense, there is a requirement to reach a minimum threshold to be considered valuable.<sup>165</sup> Cases of cybersex also pose significant legal problems in Islamic family law when conducted by married couples. Cybersex can be categorized as *khalwat sahahah*, which has legal consequences such as the obligation of iddah (waiting period) for the wife and the payment of dowry for the husband.<sup>166</sup>

Various previous studies on Islamic family law issues in the digital era, none of which link changes in reality in the digital era with the need for expanded interpretation or even renewal of articles in the Compilation of Islamic Law which has been the material law of the Religious Courts. Therefore, to complement previous studies, this article discusses the issue of Islamic family law in cyberspace based on the characteristics of cyberspace to then see where its relevance lies with the articles in the Compilation of Islamic Law that require reinterpretation and/or even renewal of family law issues in the reality of Muslim society in the cyber era.

## Methods

This study uses the netnography method or Internet Cyber Ethnography (EDMI) with a normative legal approach. Netnography as a form of adaptation of ethnographic methods to technological advances, makes cultural products resulting from human interaction in cyberspace the subject of research.<sup>167</sup> Writings, images, videos, audio and community

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<sup>165</sup> Ita Musarrofa, "Dowry Trends in the Digital Age (Sociology of Law Review of the Use of Digital Dowry in the Cyber World Community)," *Jurnal Hukum Islam* 19, no. 1 (2021): 151–74, <https://doi.org/10.28918/jhi.v19i1.3754>.

<sup>166</sup> Ita Musarrofa, "Reconstructing the Concept of Khalwat Sahahah in the Digital Era: An Analysis of Scholars' Legal Perspectives," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 2 November (2023): 577–602, <https://doi.org/10.29240/jhi.v8i2.8234>.

<sup>167</sup> Bayu Indra Pratama, *Etnografi Dunia Maya Internet* (Malang: UB Media, 2017), 102.



activities in cyberspace are important data for this study which are explored using content analysis techniques. The steps begin by coding the terms or use of relevant words and sentences, which appear most often in the documents above. In terms of coding, it is also noted in what context the term appears. Then, a classification is carried out on the coding that has been done. Classification is carried out by looking at the extent to which the meaning units are related to the research objectives. This classification is intended to build categories from each classification. Then, the meaning units and categories are analyzed and their relationships with each other are sought to find the meaning, significance, and purpose of the text content compiled in the documents. The next step describes the findings on the problems of Islamic family law from the abstraction of Islamic family law cases in the cyber world using a normative juridical approach to see the urgency for renewing the articles in the Compilation of Islamic Law. The theory used for the analysis is the theory of legal renewal and Maqasid Shari'ah with the Jasser Auda system approach.

## **Discussion**

### **1. The Problems of Islamic Family Law in the Digital Era**

As a consequence of human interactions being conducted not only offline but more rapidly and effectively online, legal issues arise concerning certain contracts within Islamic family law. Six cases of Islamic family law will be the focus of study here, arising from the massive use of information technology in the digital era.

First, is the case of online marriage. The contract of *ijab-kabul* (proposal and acceptance) as a prerequisite for marriage is required by the majority of scholars (*jumhur ulama*) to be conducted in one gathering between the guardian (*wali*) and the groom, along with witnesses. This is intended to ensure the continuity between the proposal by the guardian and the acceptance by the groom. This continuity is meant to guarantee



the validity of the contract, considering that marriage is a highly significant contract in Islam.<sup>168</sup> There are cases where a couple is required to marry promptly due to various circumstances, while there are obstacles preventing the guardian and the groom from meeting, such as the Covid-19 pandemic, thus necessitating the marriage to be conducted online.<sup>169</sup> The legal issue that arises is whether this online marriage can be validated, considering the requirement of conducting the *ijab kabul* contract in one gathering to ensure the validity of the marriage contract.

Secondly, the use of economic resources in the digital realm as a dowry (*mahar*) for marriage. In the digital era, earning a livelihood in the economic field can be done not only offline but also online, which is often easier and more promising. Some couples then utilize businesses in the digital world as dowry for marriage, such as offering bitcoins as a dowry,<sup>170</sup> *Google AdSense* and *unlimited hosting*,<sup>171</sup> aset kripto IDR,<sup>172</sup> and

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<sup>168</sup> Wahbah Az-Zuhaili, *Fiqih Islam Wa Adillatuhu (Vol. 9) Trans. Abdul Hayyie Al Kattani* (Jakarta: Gema Insani, 2011), 56–58.

<sup>169</sup> Hellena Souisa, “Terpisah Ribuan Kilometer Karena Pandemi Corona, Pasangan Indonesia Australia Tetap Menikah Lewat Zoom,” <https://www.abc.net.au/>, 2020, <https://www.abc.net.au/indonesian/2020-07-01/pasangan-indonesia-dan-australia-menggelar-akad-nikah-lewat-zoom/12407008>; Gresnia Arela Febriani, “Viral Pengantin Sendirian Di Pelaminan, Nikah Online Karena Suami Corona,” <https://wolipop.detik.com/>, 2021, <https://wolipop.detik.com/wedding-news/d-5761583/viral-pengantin-sendirian-di-pelaminan-nikah-online-karena-suami-corona>.

<sup>170</sup> Editor, “Anti-Mainstream, Pasangan Ini Menikah Dengan Mahar Bitcoin,” <https://kumparan.com/>, 2017, <https://kumparan.com/kumparanstyle/anti-mainstream-pasangan-ini-menikah-dengan-mahar-bitcoin/full>; Muhammad Yunus, “Viral Perempuan Sulsel Dilamar Pakai Mahar Bitcoin Senilai Rp 1,6 Miliar,” <https://sulsek.suara.com/>, 2021, <https://sulsek.suara.com/read/2021/04/14/201414/viral-perempuan-sulsek-dilamar-pakai-mahar-bitcoin-senilai-rp-16-miliar>.

<sup>171</sup> Reza Gunadha and Farah Nabilla, “Jatuh Cinta Pada Blogging, Pasangan Ini Menikah Dengan Mahar Google AdSense,” <https://www.suara.com/>, 2020, <https://www.suara.com/news/2020/08/07/125217/jatuh-cinta-pada-blogging-pasangan-ini-menikah-dengan-mahar-google-adsense>.

<sup>172</sup> Vinsensius Sitepu, “Pernikahan Bermahar Aset Kripto Ala Manda-Nadya, Bagaimana Kisahnya?,” <https://blockchainmedia.id/>, 2020, <https://blockchainmedia.id/pernikahan-bermahar-aset-kripto-ala-manda-nadya-bagaimana-kisahny/>.

cryptocurrency denominated in Indonesian Rupiah (IDR).<sup>173</sup> The use of digital dowries raises concerns regarding its utility. In the concept of Islamic family law, a dowry (mahar) must be something of value, tradable, known, and free from deceit,<sup>174</sup> Indeed, a dowry like Bitcoin has a fluctuating value and is susceptible to hacking. Similarly, Google AdSense earnings can only be withdrawn once they reach the minimum threshold balance. These factors may raise questions about the suitability of such digital assets as dowries by the principles of Islamic family law.

Thirdly, the issue of online sexual relations between husband and wife. In the digital era, couples in long-distance relationships (LDR) can maintain their marital relations online. Although they may not be physically together, they can experience sexual satisfaction together using online media. This phenomenon can be observed through the numerous questions and answers with doctors regarding the fulfilment of sexual needs for long-distance partners, for example, on websites like doktersehat.com,<sup>175</sup> parental.id,<sup>176</sup> gooddoctor.co.id,<sup>177</sup> Furthermore, the discovery of teledildonics enables long-distance partners to engage in remote sexual stimulation.<sup>178</sup> The legal issues that arise subsequently are whether these sexual relationships can be considered fulfilled, thus preventing one partner from filing for divorce on the grounds of unfulfilled sexual needs. Another issue is whether it can be considered as qabla

<sup>173</sup> Camelia, "Viral Pasangan Yang Menikah Dengan Mahar Saldo Gopay Rp 10 Juta," <https://www.liputan6.com/>, 2020, <https://www.liputan6.com/citizen6/read/4380986/viral-pasangan-yang-menikah-dengan-mahar-saldo-gopay-rp-10-juta>.

<sup>174</sup> Az-Zuhaili, *Fiqih Islam Wa Adillatuhu (Vol. 9) Trans. Abdul Hayyie Al Kattani*, 237–38.

<sup>175</sup> Redaksi DokterSehat, "11 Cara Mempertahankan Kintiman Seks Bagi Pasangan LDR," <https://doktersehat.com/>, 2019, <https://doktersehat.com/gaya-hidup/seksual/seks-pada-hubungan-jarak-jauh/>.

<sup>176</sup> Redaksi, "Tips Memuaskan Hasrat Seks Untuk Hubungan Jarak Jauh," <https://parentalk.id/>, 2021, <https://parentalk.id/memuaskan-hasrat-seks-untuk-hubungan-jarak-jauh/>.

<sup>177</sup> Dewi Nurfitriyana, "7 Tips Agar Kehidupan Seksual Pasangan Yang Menikah Jarak Jauh Tetap Mesra," <https://www.gooddoctor.co.id/>, 2020, <https://www.gooddoctor.co.id/hidup-sehat/seks/7-tips-agar-kehidupan-seksual-pasangan-yang-menikah-jarak-jauh-tetap-mesra/>.

<sup>178</sup> Brett Lunceford, *Virtual Sex*, n.d., 425–26.

dukhul or bakda dukhul for divorced couples who only engage in sexual relations online. This matter is significant as it affects the determination of the waiting period (*iddah*) and the dowry (*mahar*) that must be paid.

Fourthly, disobedience (*nusyuz*) and online adultery. The possibility of fulfilling marital sexual relations online also opens up the possibility of deviation from these online sexual relationships with others.<sup>179</sup> When one spouse engages in a relationship with another person in the virtual world, can they be categorized as committing *nusyuz* against their partner? And if one spouse engages in virtual sexual relations, can it be considered as committing adultery (*zina*), thus becoming a reason for divorce, given that the interpretation of *Zina* so far has been limited to cases in the physical world?

Fifthly, income from online businesses is joint property. As previously explained, in the digital era, individuals can earn money through various means, such as creating blogs, and YouTube channels, becoming dropshippers, engaging in cryptocurrency, and many more.<sup>180</sup> The issue that arises subsequently is whether all income from the online world can be considered as joint property of the husband and wife, subject to division in case of divorce. So far, the definition of joint property in the Compilation of Islamic Law is limited to assets acquired offline only. There are no provisions regarding whether assets obtained through business activities in the online world should also be counted as joint property.

Sixthly, online divorce (*talak*) and reconciliation (*rujuk*). Until now, divorce and reconciliation have been defined as valid only if done face-to-face. In the cyber era, both of these procedures can be conducted using telecommunication media mediated by computers and connected to the internet.<sup>181</sup> The legal issue that arises subsequently is whether it can be

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<sup>179</sup> Yudo Dahono, "Inilah Pengakuan Mantan PSK Virtual," <https://www.beritasatu.com/>, 2013, <https://www.beritasatu.com/news/143216/inilah-pengakuan-mantan-psk-virtual>.

<sup>180</sup> Siti Rosidah, "Tinjauan Hukum Islam Terhadap Akad Penghasilan Dalam Sistem Monetasi YouTube" (UIN Raden Intan Lampung, 2019), 63.

<sup>181</sup> Ropei and Sururie, "Dinamika Penjatuhan Talak Melalui Whatsapp Dalam Paradigma Pembaharuan Hukum Keluarga Islam," 168.

deemed valid if divorce (*talak*) and reconciliation (*rujuk*) are conducted virtually.

The six cases above are merely illustrative examples of the legal issues in Islamic family law emerging in the cyber era. Many other issues may arise alongside the extensive utilization of digital technology by society in everyday interactions.

## 2. Renewal of the Compilation of Islamic Law in the Digital Era

The essence of legal reform is to ensure that legal provisions within a legal system become better, fairer, and more beneficial, and provide greater legal certainty for society.<sup>182</sup> Legal reform involves a series of processes that test existing legal provisions, followed by amendments to create efficiency, justice, and legal equality within the community.<sup>183</sup>

Legal reform should be directed towards the principles of transcendental law, which aim to achieve higher and more abstract objectives such as justice, effectiveness, sustainability, and equality, transcending (or going beyond) its material and temporal dimensions.<sup>184</sup> These objectives are crucial in the context of legal reform to address the challenges posed by the digital era. The digital culture evolves at an increasingly rapid pace.<sup>185</sup> This presents a unique challenge for the legal system within a society. Legislation can quickly become obsolete when it is overly tied to material and temporal dimensions. Therefore, legal reform

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<sup>182</sup> Teguh Prasetyo, *Pembaharuan Hukum: Perspektif Teori Keadilan Bermartabat* (Malang: Setara Press, 2017), v.

<sup>183</sup> Prasetyo, 5.

<sup>184</sup> Isman, Ahmad Imam Hambali, and Aisha Baha Eldeen, "Transcendental Law and Legal Reform in the Digital Era," in *AI in Business: Opportunities and Limitations: Volume 2* (Springer, 2024), 485–93, [https://doi.org/doi.org/10.1007/978-3-031-49544-1\\_44](https://doi.org/doi.org/10.1007/978-3-031-49544-1_44).

<sup>185</sup> Dewi Ambarwati, "Urgensi Pembaharuan Hukum Di Era 'Metaverse' Dalam Perspektif Hukum Progresif," *Dialektika: Jurnal Ekonomi Dan Ilmu Sosial* 7, no. 2 (2022): 151–67, <https://doi.org/10.36636/dialektika.v7i2.1306>.

must provide adequate definitions within its concepts to accommodate the rapid pace of developments in the digital world.<sup>186</sup>

Legal reform is necessary when the existing legal system experiences dysfunction.<sup>187</sup> Legal dysfunction occurs when the law can no longer provide satisfactory answers to the complexities of societal developments. The developments in society during the digital era can no longer be explained by old definitions, such as those in the Compilation of Islamic Law, which were developed long before Indonesian society encountered digital life.<sup>188</sup> The Compilation of Islamic Law was established through Presidential Instruction No. 1 of 1991, dated June 10, 1991.<sup>189</sup> At that time, Indonesian society had not yet encountered the Internet. Therefore, it is necessary to redefine key concepts used in the Compilation of Islamic Law, such as marriage witnesses, marriage contracts, dowry delivery, husband's obligations, joint property, grounds for divorce, divorce lawsuit procedures, reconciliation procedures, and will implementation procedures. These concepts have undergone significant changes as digital life has become an integral part of daily life in society.

The need for legal reform, although it must go through a political process, often arises not from political pressure but from socioeconomic pressures.<sup>190</sup> In the context of the extraordinarily massive and rapid development of digital culture, the need for updating Islamic law seems no

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<sup>186</sup> H R Benny Riyanto, "Pembaruan Hukum Nasional Era 4.0," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 2 (2020): 161–81, <https://doi.org/10.33331/rechtsvinding.v9i2.455>.

<sup>187</sup> Jonathan R Hay, Andrei Shleifer, and Robert W Vishny, "Toward a Theory of Legal Reform," *European Economic Review* 40, no. 3–5 (1996): 559–67, [https://doi.org/10.1016/0014-2921\(95\)00069-0](https://doi.org/10.1016/0014-2921(95)00069-0).

<sup>188</sup> Zuhrah Zuhrah, I Gusti Ayu Ketut Rahmi Handayani, and Burhanuddin Harahap, "Check for Updates The Opportunities and Challenges of Reforming the Surrogate Heir Provisions in the Islamic Law Compilation," in *Proceedings of the International Conference on Law, Economic & Good Governance (IC-LAW 2023)*, vol. 827 (Springer Nature, 2024), 148.

<sup>189</sup> Mohamad Abdun Nasir, "THE KOMPILASI HUKUM ISLAM AND DEBATES ON SHARI'A Reconsidering Islamic Law in Indonesia," *Al-Ahkam* 22, no. 2 (2012): 197–212, <https://doi.org/10.21580/ahkam.2012.22.2.11>.

<sup>190</sup> Hay, Shleifer, and Vishny, "Toward a Theory of Legal Reform."

longer deferable. Social and cultural behaviours related to the provisions in the Compilation of Islamic Law have already undergone significant changes. Online marriages, the emergence of digital dowries (such as Bitcoin, Google AdSense, and other digital wealth), and cybersex are some examples of social and cultural behaviours in the digital society that can no longer be adequately explained by the old definitions used in the Compilation of Islamic Law. These socio-cultural developments inevitably compel the Compilation of Islamic Law to change. Reluctance to update outdated definitions can lead to legal uncertainty, which in turn makes achieving legal justice difficult.

Legal reform cannot be achieved merely by copying what other countries have done.<sup>191</sup> Such an approach is not always effective because legislation often addresses issues closely tied to the specific culture of a society or country. The Compilation of Islamic Law, for example, is a distinctive product of the Indonesian nation designed to regulate the lives of its Muslim citizens with all its unique characteristics. Therefore, the legal provisions in the Compilation of Islamic Law often differ from Islamic legal provisions in other countries. Therefore, updating Islamic law about the challenges of the digital era must be placed within the context of Indonesian society, with all its unique characteristics.

Legislation should not only provide normative definitions for existing realities but also anticipate various changes that may occur in the future.<sup>192</sup> This is because the establishment of legislation is not a process easily changed in a short period. The rapid pace of information technology development strengthens this need. In the information age, where the speed of change cannot be contained, legislation that lacks sensitivity to the future will quickly become outdated and may result in a lack of legal

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<sup>191</sup> Hay, Shleifer, and Vishny, 197–212.

<sup>192</sup> Zainal Arifin Hoesein, "Pembentukan Hukum Dalam Perspektif Pembaruan Hukum," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 3 (2012): 307–27, <https://doi.org/10.33331/rechtsvinding.v1i3.87>.

protection for meeting the real needs of society due to information technology advancements. In this context, Indonesia appears to be somewhat lagging compared to several other countries that have already adapted their legal systems to the developments of the digital era.<sup>193</sup>

The advancement of information technology, which provides many conveniences and freedoms for society, should be accompanied by legislation capable of accommodating various new needs resulting from this development. When legislation is not ready to anticipate changes, the public service function of state institutions, such as the judiciary or the Office of Religious Affairs (KUA), may be disrupted. Moreover, the presence of such legislation may even make it difficult for society to take advantage of the conveniences and freedoms provided by information technology in managing daily affairs. Furthermore, according to Katyal, the inability of the legal system to accommodate the latest developments in the digital era will lead to various negative impacts on the fulfilment of individuals' civil rights, such as privacy, due process, and equality.<sup>194</sup> The legal reform in the digital era must also prepare updates to infrastructure as supporting tools.<sup>195</sup>

The same principle applies to the reform of Islamic family law. Accommodating various needs of the community in the field of Islamic family legal services is not only related to the legislation but also its supporting mechanisms.<sup>196</sup> The legislation serves as a reference and legal framework for the implementation of contracts and disputes in the field of Islamic family law, while its supporting mechanisms are useful for

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<sup>193</sup> Sholahuddin Al-Fatih and Sara Sinha, "Capturing Law Reform in The Digital Age: Indonesian and Estonian Perspectives," *Indonesia Law Reform Journal* 3, no. 3 (2023): 304–15, <https://doi.org/10.22219/ilrej.v3i3.31970>.

<sup>194</sup> Sonia K Katyal, "Lex Reformatica: Five Principles of Policy Reform for the Technological Age," *Berkeley Tech. LJ* 36 (2021): 867, <https://doi.org/10.15779/Z38HD7NT5B>.

<sup>195</sup> David K Linnan, *Legitimacy, Legal Development and Change: Law and Modernization Reconsidered* (London: Routledge, 2016), 32.

<sup>196</sup> Arip Purkon, Ahmad Hidayat Buang, and Mohd Hafiz Jamaludin, "The Strengthening Of Islamic Law Compilation As Material Law In Indonesian Religious Court," *Al-Afkar, Journal For Islamic Studies* 5, no. 3 (2022): 144–56, <https://doi.org/10.31943/afkarjournal.v5i3.339>.



implementing public services as mandated by legislation. For example, to accommodate the implementation of long-distance marriages, the Compilation of Islamic Law must also regulate the implementation of electronic signatures, which have been recognized as valid evidence in Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE). Regarding the legality of electronic signatures, the ITE Law mandates the necessity of supporting mechanisms in the form of an Electronic System that enables digital signatures to be implemented securely and accountability.

Additionally, in the face of new developments in the cyber world that offer various conveniences and speed in completing tasks, interacting, and communicating, Islamic family law also requires specialized tools to adapt to these changes while remaining rooted in Islamic traditions. One tool that enables understanding of Islamic family law in the changing times without being detached from the sacred texts of the Qur'an and Hadith is *maqāṣid al-sharī'ah*.<sup>197</sup>

Understanding Islamic family law, Jasser Audah offers a systematic approach as a method of thinking that accommodates the new developments of the cyber world on one hand and provides normative Islamic foundations on the other.<sup>198</sup> According to Auda, *fiqh* should shift from its claim as divine knowledge to a human cognitive field of divine knowledge.<sup>199</sup> The Compilation of Islamic Law is considered the *fiqh* of the Indonesian school.<sup>200</sup> Although it is not a direct result of *ijtihād* on the primary sources of Islamic law (the Qur'an and Hadith), the Compilation

<sup>197</sup> Aidul Fitriada Azhari, M Mu'inudinillah Basri, and Fatkhul Muin, "TRANSFORMATION OF MAQASHID AL-SYARBAH (An Overview of the Development of Islamic Law in Indonesia)," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 11, no. 1 (2016): 1–18, <https://doi.org/10.19105/al-lhkam.v11i1.854>.

<sup>198</sup> Jasser Auda, "A Maqāṣidī Approach to Contemporary Application of the Sharī'ah," *Intellectual Discourse* 19, no. 2 (2011): 193–217, <https://doi.org/10.31436/id.v19i2.231>.

<sup>199</sup> Auda Jasser, *Maqashid Al-Syari'ah as Philosophy of Islamic Law: A Systems Approach* (London: International Institute of Islamic Thought, 2008).

<sup>200</sup> Asep Ajidin, "Politik Hukum Kompilasi Hukum Islam (KHI) Dalam Sistem Hukum Nasional," *Mediation: Journal of Law* 1, no. 4 (2022): 45–54, <https://doi.org/10.51178/mjol.v1i4.1153>.

of Islamic Law represents an effort by Indonesian scholars to find suitable formulations for the Indonesian context from various schools of thought within the Islamic world. As a compilation, the Compilation of Islamic Law does not merely adopt the opinions of one school of thought. Still, it selects one opinion among the many differences of opinion among scholars of various schools that is most suitable to be applied in the Indonesian context.<sup>201</sup> Therefore, the KHI must be understood as a formulation resulting from the contributions of *fiqh* and *'urf* or the customs of Indonesian society. With this understanding, of course, the formulations in the articles of the KHI are highly likely to accept new *ijtihad* results that are more suitable for current conditions and situations in Indonesia.

Auda also advocates for expanding the scope of *'urf*, which originally was limited to the customs and traditions of non-Arab communities, to include a worldview and scholarly insights of a jurist.<sup>202</sup> Through the feature of openness, the Compilation of Islamic Law should consider not only the *'urf* of Indonesian society, as has been traditionally done, but also the contemporary *'urf* of the era's transition from the 3.0 to the 4.0 industrial revolution.<sup>203</sup> One example of the changes brought by the 4.0 revolution from the previous era is the emergence of the Internet of Things (IoT), which also has implications for the field of family law as explained above. The Compilation of Islamic Law should be able to accommodate these developments before becoming outdated.

Openness is also interpreted as expanding the perspective of a jurist in understanding and determining the law from sacred texts.<sup>204</sup> Not only

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<sup>201</sup> Afridawati Afridawati, "History, Typology, and Implementation of Islamic Law in Indonesia: Combination of Sharia and Fiqh or the Result of Historical Evolution?," *Al-Risalah* 21, no. 1 (2021): 33–47, <https://doi.org/10.30631/al-risalah.v21i1.676>.

<sup>202</sup> Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah Trans. Rosidin and 'Ali 'Abd El-Mun'im* (Bandung: Mizan, 2015), 262–75.

<sup>203</sup> Nur Solikin and Moh Wasik, "The Construction of Family Law in the Compilation of Islamic Law in Indonesia: A Review of John Rawls's Concept of Justice and Jasser Auda's Maqashid al-Shari'a," *Uhumuna* 27, no. 1 (2023): 315–40, <https://doi.org/10.20414/ujis.v27i1.708>.

<sup>204</sup> Muhammad Baiquni Syihab, "Telaah Kritis Pemikiran Jasser Auda Dalam Buku 'Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach,'" *AN NUR: Jurnal Studi Islam* 15, no. 1 (2023): 114–36,

should they be open to cultures other than Arab culture, but in the era of the 4.0 industrial revolution and the development of information technology, a jurist must also consider other scholarly disciplines in determining a law.<sup>205</sup> In reformulating the articles of the Compilation of Islamic Law, it should therefore take into account the *'urf* of Indonesian society, the technological developments of the 4.0 industrial revolution era, as well as other supporting disciplines.<sup>206</sup>

The establishment of each article in the Compilation of Islamic Law should be understood in the context of its *maqāṣid al-sharī'ah*. Understanding the *maqāṣid al-sharī'ah* behind establishing each article will allow for a broad space for change. For example, the intention behind meeting the sexual needs of husband and wife is to create a harmonious relationship between partners, thus fostering a family characterised by tranquillity, affection, and mercy. Fulfilling sexual needs serves as a means to achieve the goal of building a peaceful family. Sexual relations are merely the means to an end, with the ultimate goal being the establishment of a tranquil family. These means can change, for example, through the use of media such as Skype or video calls for couples who are apart. Sexual relations in this context may not occur physically but can happen cognitively and emotionally, which is also highly conducive to achieving the goal of fostering a harmonious relationship with one's partner.<sup>207</sup>

Every article in the Compilation of Islamic Law can be examined in terms of distinguishing between means (*wasā'il*) and objectives (*ahdāf*).

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<https://doi.org/10.37252/annur.v15i1.455>.

<sup>205</sup> Jasser Auda, "Realizing Maqāṣid in the Sharī'ah," in *The Objectives of Islamic Law: The Promises and Challenges of the Maqasid al-Shari'a* (Lexington Books, 2020), 35.

<sup>206</sup> Nandani Zahara Mahfuzah and Dhiauddin Tanjung, "Maqashid As-Syari'ah Menurut Jasser Auda," *JIS: Journal Islamic Studies* 2, no. 2 (2024): 251–57; M Amin Abdullah, "Bangunan Baru Epistemologi Keilmuan Studi Hukum Islam Dalam Merespon Globalisasi," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 46, no. 2 (2012), <https://doi.org/10.14421/ajish.v46i2.42>.

<sup>207</sup> Taufik Hidayat, "Family Law Reform in The Era of Society 5.0," in *RADEN INTAN: Proceedings on Family and Humanity*, vol. 1, 2024, 374–84.

Several articles in the Compilation of Islamic Law, such as those mentioned above—witnesses to marriage, marriage contract, dowry delivery, husband's obligations, joint marital property, grounds for divorce, examination of divorce petitions, procedures for reconciliation, procedures for executing wills—must be viewed in terms of distinguishing between means and objectives, between the instruments and the goals. If accuracy, certainty, and accountability in these contracts are the objectives (*ahdāf*), then the presence, cash delivery, and signing are the means established to achieve those goals. The means can change and utilize facilitative methods offered by internet technology, as long as the objectives of these contracts are still achieved. With this distinction, it can be seen where room for change is possible and what goals are intended behind the establishment of these articles. Understanding the *maqāṣid al-sharī'ah* is crucial for finding room for change while remaining rooted in and obtaining legitimacy from the sacred texts.

The several articles in the Compilation of Islamic Law that are deemed necessary for redefinition or revision, including the need to add new articles to accommodate developments in the field of information technology:

1. Witnesses of Marriage.

In the Compilation of Islamic Law, Article 24, Paragraph (2) stipulates that every marriage must be witnessed by two witnesses, while Article 26 states that witnesses must be present and directly witness the marriage contract, and sign the marriage certificate at the time and place of the marriage contract.<sup>208</sup>

Interpreting the requirement for the presence of witnesses in this context, when considering the capabilities of virtual simulation in the cyber world, which can virtually bring people together simultaneously, witnesses of marriage who are located remotely can also be considered valid witnesses, fulfilling one of the essential elements of marriage.

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<sup>208</sup> Tim Citra Umbara, *Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan Dan Kompilasi Hukum Islam* (Bandung: Citra Umbara, 2011), 234.

Consequently, marriages conducted with online witnesses can be deemed valid. Previous research in various Muslim countries shows differences in the validity of online witnesses, namely some who consider them valid and others who do not.<sup>209</sup>

The question that arises next is how witnesses who are present remotely can sign the marriage contract at the same time and place as mandated by the Compilation of Islamic Law. The answer to this question is certainly feasible. Furthermore, the validity of electronic signatures has already been recognized in Law Number 1 of 2024 concerning Electronic Information and Transactions (ITE), specifically in Articles 11 and 12.<sup>210</sup>

Article 11 paragraph (1) of the Information and Electronic Transactions Act (ITE Law) explains:

- (1) Electronic Signatures have legal validity and consequences as long as they meet the following requirements:
  - a. The data related to the creation of the Electronic Signature pertains only to the Signatory;
  - b. The data related to the creation of the Electronic Signature during the electronic signing process is under the control of the Signatory;
  - c. Any changes to the Electronic Signature that occur after the signing time can be detected;

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<sup>209</sup> Muhammad Taufiq, Iain Madura, and Ahmed Salem Ahmed, "Online Marriage in the Perspective of Fiqh Nawazil," *Jurnal Hukum Islam* 21, no. 1 (2023): 29–54, [https://doi.org/10.28918/jhi\\_v21i1\\_02](https://doi.org/10.28918/jhi_v21i1_02). See, Abdul Hakim and Bagus Haziratul Qodsiyah, "Online Marriage During the Covid-19 Pandemic: A Study of the Fatwas in Egypt, Iraq, Syria, and Saudi Arabia," *Al-'Adalah* 19, no. 1 (2022): 141–60, <https://doi.org/10.24042/adalah.v19i1.10720>. See to, Nurjannah Septyanun and Yulias Erwin, "Marriage Aqd Validity Through Electronic Media Based on Positive Law and Islamic Law," *Fundamental: Jurnal Ilmiah Hukum* 12, no. 2 (2023): 489–505, <https://doi.org/10.34304/jf.v12i2.130>.

<sup>210</sup> This law has undergone two amendments. The first amendment was made in 2016, resulting in Law No. 19 of 2016, and the second amendment occurred in 2024, resulting in Law No. 1 of 2024 on Electronic Information and Transactions. "UU No. 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik," Database Peraturan | JDIH BPK, article 12 and 13, accessed August 7, 2024, <http://peraturan.bpk.go.id/Details/37589>.

- d. Any changes to the Electronic Information related to the Electronic Signature after the signing time can be detected;
- e. There are specific methods used to identify the Signatory; and
- f. There are specific methods to demonstrate that the Signatory has consented to the related Electronic Information.

This article opens up the possibility of conducting the marriage contract electronically by witnesses located in different locations. Of course, the requirements as stated in Article 11 paragraph (1) must be fulfilled. This is where the importance of implementing an electronic system as a supporting mechanism comes into play. The Office of Religious Affairs (KUA) as the institution responsible for recording marriage contracts can develop an electronic system in the form of a digital application that can assure the authenticity of electronically conducted signatures.

The existence of this electronic system is also recognized and regulated in the ITE Law, Article 12, which stipulates that every individual involved in Electronic Signatures is obliged to provide security for the Electronic Signatures they use. The security of Electronic Signatures must, among other things, be ensured through systems that cannot be accessed by unauthorized individuals.<sup>211</sup>

Therefore, the existence of a reliable and trustworthy electronic system is imperative for the implementation of legally binding electronic signatures. About this electronic system, the ITE Law also regulates its implementation in the second part concerning the Provision of Electronic Systems. In Article 15, paragraphs (1) and (2), it is stated:<sup>212</sup>

- (1) Every Provider of Electronic Systems must operate the Electronic System reliably and securely and be responsible for the proper functioning of the Electronic System.

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<sup>211</sup> “Undang-undang No. 11 Tahun 2008,” article 12.

<sup>212</sup> “Undang-undang U No. 11 Tahun 2008,” article 15.

(2) Providers of Electronic Systems are responsible for the operation of their Electronic Systems.

Therefore, the provision in Article 26 of the Compilation of Islamic Law, which states that witnesses must be present and directly witness the marriage contract, and sign the marriage certificate at the time and place of the marriage contract, can be fully conducted through virtual technology supported by an electronic system. However, to provide clarification regarding the accommodation of the Compilation of Islamic Law towards the mechanism of virtual witness attendance and electronic signatures, the provisions in Article 26 not only need to be reinterpreted but also amended or added with clauses that can accommodate this process. For example, two additional paragraphs can be added to Article 26:

- (2) The presence, testimony, and signing of the marriage contract can be conducted digitally/electronically by witnesses.
- (3) The digital presence, testimony, and signing are conducted through a reliable and accountable electronic system.

## 2. Marriage Contract

In the Compilation of Islamic Law, Article 27, it is stated that the proposal (hijab) and acceptance (Kabul) between the guardian and the prospective groom must be consecutive and without interruption. The remote marriage contract between the guardian and the prospective groom can be deemed valid through this article, as the requirement of consecutive and uninterrupted actions can be fulfilled with the current speed of internet connection.

The possibility of validating witnesses and the marriage contract online certainly affects the determination of the validation of an unregistered marriage (nikah *sirri*) by the Religious Court.<sup>213</sup> The judge of the Religious Court would have no reason to reject the

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<sup>213</sup> Siti Muna Hayati et al., "Religious Tradition and Technology: Debate among Penghulus about Online Marriage Law in Banjarmasin," *Journal of Islamic Law* 5, no. 1 (2024): 105–24, <https://doi.org/10.24260/jil.v5i1.2187>.



validation of a secret marriage if the marriage was conducted with online witnesses and a marriage contract.

### 3. Dowry Presentation.

In the Compilation of Islamic Law, Article 33, paragraph (1), it is stated that the dowry is to be presented in cash. The interpretation of the term "cash" needs to be expanded to include the possibility of presenting the dowry in cash online. Currently, many applications have been developed to accommodate financial transactions online, whether related to banking, buying and selling activities, bill payments, and other financial transactions. Internet users in Indonesia can utilize various applications to perform cash transactions in the virtual world, such as LinkAja, Ovo, Go-Pay, and similar applications. Although transactions like these are commonly referred to as non-cash transactions, in reality, the transfer of ownership rights over digital money assets has occurred online. Therefore, if the dowry requested is electronic money (specifically mentioned) or just money (without specifying its form), electronic transfer can be considered a form of presenting the dowry in cash.

### 4. Husband's Obligations

In Article 80, paragraph (7), it is stated that the obligation as referred to in paragraph (5) is void if the wife is disobedient (nusyuz).<sup>214</sup> In interpreting the term "nusyuz," it needs to be expanded to include disobedience committed in the virtual world. For example, adultery may not necessarily occur in the physical world but could take place through social media. The ease of interacting with the opposite sex in the virtual world allows wives to find dating partners even if only online. This reality requires judges to expand the definition of "nusyuz" to include adultery committed through social media as one of its forms.

### 5. Joint Property of Husband and Wife

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<sup>214</sup> 257.

In Article 91, it is stated as follows:<sup>215</sup>

- (1) Joint property as mentioned in Article 85 above can consist of tangible or intangible assets.
- (2) Tangible joint property can include immovable property, movable property, and securities.
- (3) Intangible joint property can consist of rights or obligations.
- (4) Joint property can be used as collateral by one party with the consent of the other party.

The development of the digital world enables the ownership of joint property in the form of soft files, applications, websites, and others, which hold significant value. Virtual objects like these often possess considerable value and can easily be converted into money. To provide legal certainty, the Compilation of Islamic Law needs to offer explanations or redefine the forms of joint property encompassing tangible and intangible assets that accommodate virtual objects. Alternatively, the Compilation of Islamic Law could also incorporate virtual objects as one of the forms of joint property eligible for division in the event of divorce. Religious Court judges should also consider ownership of wealth in the digital realm as joint property that needs to be considered for division in case of divorce.

## 6. Grounds for Divorce

In Article 116(a), it is stated that one party committing adultery or engaging in alcoholism, drug addiction, gambling, and similar behaviours that are difficult to cure can be one of the grounds for divorce.<sup>216</sup> In interpreting the term "adultery," extramarital affairs conducted in the virtual world by spouses should also be taken into account by religious court judges. Sexual relations that can now be conducted online require judges to consider online adultery as a factor in deciding to accept a divorce petition on grounds of adultery.

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<sup>215</sup> 259.

<sup>216</sup> 268.

Furthermore, in paragraph (b), it is stated that one party leaving the other for 2 (two) consecutive years without the permission of the other party and without valid reasons or due to reasons beyond their capability can also be a reason for divorce. The advancement of internet technology renders the term "leaving" no longer have the same meaning as in the past. Physically separating in distant locations for a long period does not necessarily imply abandonment.

Currently, many couples are maintaining long-distance relationships, with the assistance of internet technology. The capabilities of the cyber world in overcoming issues of space and time allow for the fulfilment of both material and immaterial needs, even when partners are separated by distance and time differences. Providing material support from a distance has long been facilitated through transfers and is further streamlined in this era through various online payment applications. Additionally, meeting the sexual needs of spouses is also highly feasible from a distance through cybersex activities. As explained above, the development of sexual aids utilizing Internet of Things technology makes cybersex activities increasingly realistic and capable of fulfilling the biological needs of spouses.

#### 7. Examination of Divorce Lawsuits

Article 145 stipulates that if reconciliation is not achieved, the examination of divorce petitions is conducted in closed court sessions.<sup>217</sup> Presently, Religious Courts have adopted an e-court system, facilitating case registration and court proceedings, including questioning during hearings. The utilization of the e-court system is an implementation of Supreme Court Regulation No. 3 of 2018 regarding Case Administration Guidelines in Electronic Courts dated March 29, 2018, officially enacted on April 4, 2018. This regulation was then replaced by Supreme Court Regulation No. 1 of 2019 and was amended

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<sup>217</sup> 278.

for the second time in 2022, becoming Supreme Court Regulation No. 7 of 2022 concerning Case Administration and Trial in Electronic Courts.<sup>218</sup>

Four things can be done online using the e-court system: e-filing (online case registration at the Court), e-payment (online payment of case fees), e-summons (online summoning of parties), and e-litigation (online litigation).<sup>219</sup> The implementation of the e-court system is an effort by the Supreme Court to apply the principle of speedy justice and low cost for justice seekers in the community.<sup>220</sup>

#### 8. Procedure for Divorce Mediation

In Article 167 paragraph (2), it is stated that reconciliation (*rujuk*) is conducted with the wife's consent in the presence of the Marriage Registrar or Assistant Marriage Registrar.<sup>221</sup> Just as the solemnization of marriage is highly feasible to be conducted online, the implementation of reconciliation, in the cyber world, is also highly feasible to be conducted virtually. As e-court is established to facilitate case administration in courts, the virtual reconciliation administration should also be accepted and deemed valid.

#### 9. Procedures for Carrying Out a Will

Article 195 of the law stipulates provisions regarding wills. In paragraph (1) of this article, it is stated that a will must be made orally in the presence of two witnesses or before a notary.<sup>222</sup> In paragraph (4), it is stated that the declaration of consent in paragraphs (2) and (3) of this article shall be made orally in the presence of two witnesses or writing before two witnesses in the presence of a notary. The

<sup>218</sup> “Perma No. 7 Tahun 2022 Tentang Perubahan Atas Peraturan Mahkamah Agung Nomor 1 Tahun 2019 Tentang Administrasi Perkara Dan Persidangan Di Pengadilan Secara Elektronik,” Database Peraturan | JDIH BPK, accessed August 7, 2024, <http://peraturan.bpk.go.id/Details/248072/perma-no-7-tahun-2022>.

<sup>219</sup> Aco Nur and Amam Fakhur, *Hukum Acara Elektronik Di Peradilan Agama, Era Baru Sistem Peradilan Di Indonesia* (Surabaya: Pustaka Saga, 2021), 112–13.

<sup>220</sup> “E Court Mahkamah Agung RI | Electronics Justice System,” accessed February 16, 2024, <https://ecourt.mahkamahagung.go.id/>

<sup>221</sup> *Undang-Undang Republik Indonesia*, 287.

<sup>222</sup> 298.

presence of the parties and the witnessing of the will in the digital era are highly feasible through video, YouTube, social media, or other digital platforms. Judges, in the case of wills, must also consider the possibility of wills being made through available digital media. The same necessity also applies to judges regarding the provisions of will revocation in Article 199, which can also be done virtually.

According to the provisions of Law Number 11 of 2008 concerning Electronic Information and Transactions, video and other electronic documents can serve as valid evidence. In Article 44(b), it is mentioned that evidence can consist of Electronic Information and/or Electronic Documents as referred to in Article 1 number 1 and number 4 as well as Article 5 paragraph (1), paragraph (2), and paragraph (3). Meanwhile, Article 1 number 1 states: Electronic Information is one or a collection of electronic data, including but not limited to writing, sound, images, maps, designs, photos, electronic data interchange (EDI), electronic mail (email), telegrams, telex, facsimiles, letters, signs, numbers, access codes, symbols, or perforations that have been processed and have meaning or can be understood by capable individuals.<sup>223</sup>

Article 1 number 4 explains an electronic Document is any Electronic Information that is created, transmitted, forwarded, received, or stored in analogue, digital, electromagnetic, optical, or similar form, which can be viewed, displayed, and/or heard through a Computers or Electronic System, including but not limited to writing, sound, images, maps, designs, photos, letters, signs, numbers, access codes, symbols, or perforations that have meaning or can be understood by capable individuals. Furthermore, in Article 5 paragraphs (1), (2), and (3), it is explained that: (1) Electronic Information and/or Electronic Documents and/or their printouts are valid legal evidence. (2) Electronic Information and/or Electronic

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<sup>223</sup> “Undang-undang U No. 11 Tahun 2008.”

Documents and/or their printouts as referred to in paragraph (1) are an extension of valid evidence according to the applicable Procedural Law in Indonesia. (3) Electronic Information and/or Electronic Documents are declared valid if using an Electronic System by the provisions regulated in this Law.<sup>224</sup>

The various explanations above highlight the complexity of the changes needed to address the challenges of the digital era. Therefore, in the effort to update the Compilation of Islamic Law, it is essential to involve various parties with expertise in their respective fields. Reforming family law in the digital era must involve collaboration among authorities, technology experts, academics, and civil society to develop policies that are responsive to social and technological changes. In this context, family law must be able to meet the needs of families as they navigate changes in behaviour, technological demands, and social dynamics.

## Conclusion

The Compilation of Islamic Law as material law in the Religious Court has lagged far behind the development of information technology in the current digital era. The ability of the Industrial Revolution 4.0 era to shorten the distance of space and time requires an update to the Compilation of Islamic Law to adapt to the ever-evolving information technology. The articles in the Compilation of Islamic Law that need to be renewed include marriage witnesses, marriage contracts, submission of dowry, husband's obligations, joint property, reasons for divorce, examination of divorce lawsuits, procedures for reconciliation and procedures for implementing wills. Jasser Auda's *Maqasid Shariah* system theory can be used as a basis for thinking to renew the Compilation of Islamic Law. Openness in the system theory provides a basis that Islamic law must be open to changes in the culture of contemporary global

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<sup>224</sup> "Undang-undang U No. 11 Tahun 2008."

society by considering the purposefulness of the *al-Ghayah* (purpose) where the system can produce goals in various ways and the same situation or produce various goals in various situations according to the situation and conditions of the development of the era. The final goal of this renewal is to guarantee justice, certainty and legal benefits for society, especially the Muslim community.

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