

VALIDITY OF ELECTRONIC DOCUMENTS AS A TOOL OF EVIDENCE IN DIVORCE DECISIONS AT EAST JAKARTA RELIGIOUS COURT

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Abstract. The rapid development and advancement of information technology has led to changes in human life which directly affect the birth of new forms of legal action. Activities through the media of electronic systems, also known as cyberspace. This study aims to determine the validity of divorce through social media (electronic) in divorce cases in the Religious Courts, to analyze the judge's legal considerations on social media evidence in divorce cases in Decision Number 1528/Pdt.G/2017/PAJT and to determine the validity of the divorce. through social media (electronic) in the perspective of Islamic law and legislation in Indonesia. This study uses normative legal research, namely by studying the literature, laws and regulations, and writings that are closely related to the problem under study. This research uses the Information Search Literature Study and the data needed in several sources. Preparation using literature study is done by reading, studying and analyzing literature or books and other sources related to the research theme. Deductive data analysis is a procedure that begins with a general event, the truth of which is known or believed, and ends at a conclusion. According to Islamic law, divorce is through online media such as telephone, Facebook, Youtube, SMS, Whatsapp, or Instagram, whether it is only in the form of sound or accompanied by the form of the party communicating in the form of an image (video call). Then according to the Shari'a, the divorce is declared as a valid divorce, even though there is no guardian and it is not delivered directly in front of the wife. According to positive law, it is in line with the provisions in Islamic law which regulates divorce, namely the arrangement in KHI comes from Islamic law. However, the absence of legality in the form of proof of divorce (with no divorce being handed down in court), namely through online media will indeed have an impact on marital status problems and other legal problems that may arise so that Muslims also need to comply with state law.

Keywords: Electronic Documents; Evidence; Divorce

INTRODUCTION

Juridically, activities in cyberspace cannot be approached with conventional legal standards and qualifications (Wartoyo & Ginting, 2022), because if this method is taken, there will be too many difficulties and things that will escape the enforcement of the law (Chamberlain, 2021). Activities in cyberspace are virtual activities that have a very real impact even though the evidence is electronic (Karagiannis & Vergidis, 2021). Thus, in relation to the law of evidence, it usually creates a dilemma, on the one hand it is hoped that the law can keep up with the times and technology (Putra, 2021), on the other hand, legal recognition of various types of digital technology developments is needed to function as evidence in court. In this regard (Fukami, Stoykova, & Geradts, 2021), it is necessary to pay attention to the security and legal certainty in the use of information (Lontoh, Maramis, Mawuntu, & Konoras, 2021), media and communication technology so that they can develop optimally (Abubakar, 2021). To overcome security disturbances in the operation of electronic systems (Ye et al., 2021), the legal approach is absolute, because without legal certainty (Yasa, Sudiarawan, Dwijayanthi, & Pranajaya, 2021), the problem of using information technology is not optimal (Antsygina & Teteryatnikova, 2022).

One of the things that is an example of technological developments affecting the development of law is in the field of civil cases, in this case divorce cases (Pasaribu & Tanjung, 2021). There was a case at the East Jakarta Religious Court in which electronic evidence became the instrument

used as evidence for divorce. Indeed, some time before between husband and wife there had been a fairly complicated dispute until finally the husband sent a short message via WhatsApp which basically wanted to divorce his wife, the incident happened on March 20, 2017.

Along with the times, divorce can be pronounced anytime and anywhere using technology (Sardi & Livingston, 2022), namely through social media. However, this is still a matter of debate among scholars (Zamil, Ramakrishnan, Jamal, Hatif, & Khatib, 2021). Indonesia as a state of law has made a law that regulates this matter, namely Law no. 19 of 2016 concerning Amendments to Law No. 11 of 2008 or UU ITE. After the issuance of this law, social media can become a piece of evidence that can be brought to court.

This study aims to determine the validity of divorce through social media (electronic) in divorce cases in the Religious Courts, to analyze the judge's legal considerations on social media evidence in divorce cases in Decision Number 1528/Pdt.G/2017/PAJT and to determine the validity of the divorce. through social media (electronic) in the perspective of Islamic law and legislation in Indonesia.

This research is expected to bring the following benefits: First, to provide an overview of how electronic evidence is used in divorce trials in the Religious Courts and to find out in what form it is valid. Second, provide a reference for the development of legal theory and practice. Third, it is hoped that the results of this study can be used as a source of information from all levels of society. Fourth, the researcher hopes that this research can be used as a reference for

further research on related issues.

METHODS

This study uses normative legal research, namely by studying the literature, laws and regulations, and writings that are closely related to the problem under study. This research uses the Information Search Literature Study and the data needed in several sources. Preparation using literature study is done by reading, studying and analyzing literature or books and other sources related to the research theme. Deductive data analysis is a procedure that begins with a general event, the truth of which is known or believed, and ends at a conclusion.

RESULTS AND DISCUSSION

The purposes and objectives of the petition for divorce from the Petitioners for the Convention are as stated by the witnesses (attached). Considering whereas, from the posita of the petition for divorce, the Convention Petitioner shows that this case includes a dispute in the field of marriage, and the Convention applicant as evidenced by P.1 (in the form of an ID card) and the Convention Respondent as T.4 (in the form of KK). The contents of the evidence describe the residence of the applicant and the respondent to the convention, and the evidence has met the formal and material requirements, therefore it can be accepted as evidence and can be considered further. And it turns out that both are domiciled in the jurisdiction of the East Jakarta Religious Court, so based on the provisions of Article

49 paragraph (1) letter a and Article 66 paragraph (2) of the Law. No. 7 of 1989 concerning Religious Courts as amended by Law. No. 3 of 2006 and Law. Number 50 of 2009, the East Jakarta Religious Court has absolute and relative authority to examine, decide, and settle the application for divorce from the Convention Petitioner.

Based on the decision, considering that during the examination process in the trial the Panel of Judges had tried to reconcile the two litigants but failed to reconcile the two parties as husband and wife. Although unsuccessful, the panel of judges has fulfilled Article 65 in conjunction with Article 82 paragraph (4) of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts and Article 31 paragraph (2) of government regulation number 9 of 2006. 1975 and Article 115 of the KHI (Compilation of Islamic Law) is deemed to have been fulfilled.

On July 11, 2017 both parties have pursued peace efforts through mediation with mediator Drs. H. Sudirman Malaya, SH., MH., and according to the mediator's report dated July 18, 2017, the result was that they failed to reach an agreement to make peace and continue their household, then according to Article 32 (1) PERMA Number 1 of 2016 it must be declared unsuccessful. In the decision that has been submitted, after reading the letter of application for divorce from the applicant for the Convention which is strengthened by himself in his reflection, the main issue of the petition for the Convention Petitioner is to be given permission to impose one raj'i divorce against the

Convention Respondent in front of the Jakarta Religious Court. Timur with the argument and reason that since June 2014 the domestic peace between the Convention Applicants and the Convention Respondents has often been colored by constant disputes and quarrels, the cause of which is that between the Convention Applicants and the Convention Respondents there is no longer a match.

In addition, Convention Respondents often use harsh words, namely often use animal words or berate the Convention Applicants. Even the Convention Respondents often get angry excessively in public which makes the Convention Petitioners feel ashamed and the Convention Respondents have threatened to commit suicide to the Convention Applicants. In essence, the Respondent to the Convention can no longer be advised in the context of fostering a good household.

This can be direct evidence that there is a dispute between the Convention Applicant and the Convention Respondent that cannot be resolved or find an amicable point that can resolve the problem.

The climax of the quarrel and dispute occurred in February 2017 which caused the Convention Respondent to leave the Convention Applicant, so that since then the Convention Petitioner and the Convention Respondent have not lived in the same house and have never had a relationship like husband and wife until now, so that the household become completely inharmonious as has been described in the sit-down section.

Based on Decision No. 1528/Pdt.G/2017/PAJT from the statement

of answers in the Convention, the main issues/significant points of dispute in this case are concluded as follows:

According to the Convention Petitioner's version, that the root triggers for disputes and quarrels in the household between the Convention Applicants and the Convention Respondents since June 2014 which peaked in February 2017 between the Convention Applicants and the Convention Respondents have continuously occurred disputes and quarrels and do not get along anymore as husbands should. wife and separated from living together until this case is decided this application has been submitted for 1 (one) year and 1 (one) month. 2. According to the Respondent's version of the Convention, that the root triggers for disputes and quarrels in the household between the Convention Applicants and the Convention Respondents since June 2014 which peaked in March 2017 between the Convention Applicants and the Convention Respondents have continuously been disputes and quarrels and do not get along as they should. husband and wife and separate residence together until this case is decided has been going on for 1 (one) year. Considering, whereas the legal basis used as an excuse by the Respondent to the Convention is the provision of the formulation of Article 1 of Law No.1 of 1974 concerning Marriage.

The material law in this case is the applied legal system of the Religious Courts in the field of marriage, the version of the Compilation of Islamic Law (KHI) in Indonesia as well as jurisprudence and doctrine/opinions of Islamic law experts

sourced from the Qur'an and the Hadith of the Prophet SAW.

As for the reasons that have been acknowledged in the trial mentioned above, the Convention Petitioner is not burdened with mandatory evidence, because the confession is perfect evidence. With the acknowledgment of the Convention Respondent, it is deemed that the Convention Petitioner's petition has been proven. This is in accordance with the jurisprudence in the MARI Decision Number 496 K/Sip/1971 dated September 1, 1971.

In order to defend the arguments of the Convention Petitioner's application in the convention, the Convention Applicant has submitted written evidence (codes P.1 and P.2) and to strengthen the rebuttal arguments in the Convention Petitioner/Defendant of the Convention has submitted written evidence of code (P.3 and P.4) and present 3 (three) witnesses as their statements have been described in the sit-down section (attached).

In order to defend the arguments for counterclaim in the Convention (de Herdt, 2022), the Respondent to the Convention/Plaintiff for the Convention turns out to be irrelevant to the a quo case, the Panel of Judges considers that the documents of evidence are disproportionate to be considered and must be set aside (Pelker, Brown, & Tucker, 2021).

Because the Convention Respondent denies some of the posita (fundamentum petendi) of the Convention Petitioner's petition, in order to seek material truth regarding the reasons for divorce argued

by the Convention Petitioner (Reece, 2022), the Convention Petitioner is obliged to provide evidence as stated in the Supreme Court Decision Number 499 K/Sip/1970 dated February 4, 1970. For this reason, testimonies from family witnesses and or close people from each party have been heard (Silva, 2022). As for the written evidence submitted by the Convention Petitioner in a formal manner, it can be accepted because it has complied with the provisions of the formal evidence, namely that it has been dinazegelen and has been shown in its original form at trial. This shows that according to the ITE Law, electronic evidence owned can be legal in the eyes of the law. While the substance of all the evidence is material and specific. Thus, if a legal husband and wife are in constant disagreement, it can be categorized as a disharmonious couple and it is judged that the marriage has broken down (marrige breakdown) so that the noble purpose of marriage cannot be realized, therefore maintaining a household that is seen as such. as a futile act, it will even cause prolonged mental suffering for both parties and can add to mafsadat, which is prioritized over attracting the benefit, as the fiqh rules were taken for consideration by the Panel of Judges which stated: Anticipating negative impacts should be prioritized over pursuing benefit (which is not clear). Kitab Al-Ashbah Wa Al-Nazha-ir, page 62.

Likewise, the actions of both parties in their capacity as husband and wife who do not want to communicate for a long time can be considered to have left the corridor of the formulation of Article 3 of the KHI (Islamic Law Compilation) so that it

is certain that they will no longer be able to share affection in preserving joints. -the joints of the household that are *sakinah* based on *mawaddah* and *rahmah* which are the essential goals of a marriage so that in the formulation of Article 19 letter (f) Government Regulation Number 9 of 1975 in conjunction with Article 116 (f) of the Compilation of Islamic Law, the panel of judges is of the opinion that the Petitioner's petition for Convention is reasonable and not against the law.

Based on these considerations, the panel of judges concluded that the two parties could no longer be reconciled because the condition of the household of the Convention Petitioner and the Convention Respondent had broken up in such a way that it was difficult to maintain, then based on Article 70 paragraph (1) of Law Number 7 of 1989 concerning the Religious Courts and because the Convention Petitioner and the Convention Respondent have never been divorced, the Petition of the Convention Petitioner in item 2 can be granted by giving permission to the Convention Petitioner to impose one *raj'i* divorce against the Convention Respondent in front of the East Jakarta Religious Court, the decision of which will be set forth in this decision, and based on the provisions of Article 70 paragraph (3) of Law Number 7 of 1989 concerning the Religious Courts, the Petitioner may pronounce the pledge of divorce after this decision has permanent legal force.

As we all know that the evidence in the trial is not only single evidence. There are several pieces of evidence whose position is stronger than electronic evidence. Such as written evidence in the

form of marriage certificates, etc. and there are also witnesses who are asked by the judge to be present and provide information in court in court to each litigant party. After the main evidence has been submitted in court and accepted by the judge as evidence, it is allowed to submit other evidence such as electronic evidence in the form of photos and pieces of conversation electronically via SMS to strengthen the plaintiff and the defendant in proving the lawsuit and responding to the lawsuit. in court.

Whereas in the decision number 1528/Pdt.G/2017/PA.JT, there is evidence submitted by the Respondent to the Convention/Applicant in the form of a WA message which is one of the electronic evidence tools to the panel of judges. In his submission, the Convention Petitioner said that what was conveyed by the Convention Petitioner/Respondent in point 5 was not true, which was true that the Convention Petitioner who already had another woman. This evidence is declared valid in accordance with Law Number 11 of 2008 article 5 paragraph (2), namely regarding electronic information, electronic documents, and their printed results are an extension of legal evidence. In accordance with the law, the expansion referred to is the addition of other evidence other than written evidence, witnesses, oaths, and judges' suspicions.

This shows that based on the argument of the Convention Respondent's rebuttal in point 1 above, the Convention Petitioner is not a good husband which the Convention Petitioner as the husband of 2 (two) sons should be more concerned

about the future of his two children than seeking pleasure with other women so that due to marriage between the Convention Applicant and the Convention Respondent is not in accordance with Article 1 of Law No.1 of 1974 concerning Marriage, it is appropriate for the East Jakarta Religious Court Panel of Judges to declare the marriage between the Convention Applicant and the Convention Respondent to be held in Jakarta on 29 June 2013 as Excerpt of Marriage Certificate No: --- at the Office of Religious Affairs, Pancoran District, broke up due to divorce with all the legal consequences.

As for the law of divorce through short message service (SMS) in the perspective of Islamic law, according to the scholars who allow it, it must fulfill the elements; firmness of intention, the intention of *sighat talak* conveyed must be understood and understood, protracted disharmony which ultimately leads to the absence of good verbal communication between the two in fostering a household, and limited space and time to sit together. Meanwhile, the impact of divorce through short message service (SMS) in the perspective of Islamic law is that it should be done with the principle of *ihsan*, namely in a good, wise way and not causing great harm.

By examining the evidence, it is stated that the evidence has been analyzed and has sufficient stamp duty. The evidence was received by the judge after written evidence in the form of a marriage certificate and witnesses from the plaintiff's family and closest relatives. So the lawsuit filed is getting stronger and has a greater

chance of convincing the judge that the lawsuit filed is true, there is a dispute and there is no harmony. In addition, the testimony of the witnesses at the trial related to the dispute between the plaintiff and the defendant which was juxtaposed with the electronic evidence submitted turned out to be continuous. Namely, there is power over the truth of the affair and the stability of the two parties in the litigation for divorce. The panel of judges also equated or synchronized the evidence with the main accusation in the lawsuit. Is the evidence that has been submitted in accordance with the allegations stated in the lawsuit. In accordance with existing regulations, every evidence submitted to the court must be sufficiently stamped, which means that it has been analyzed by the judge that the evidence can be used as evidence in court.

If the documents of evidence submitted by both the Convention Applicant/Reconvention Defendant and Conventional Respondent/Reconventional Plaintiff are found to be irrelevant to the *a quo* case, the Panel of Judges considers that the evidences are disproportionate to be considered and must be set aside. This is as regulated in Article 1888 of the Civil Code jo. MARI Decision Number 3609 K/Pdt/1985 dated December 9, 1987.

As stated 51 in Article 1902 of the Civil Code concerning the beginning of proof with a written deed, then proof with witnesses.

The testimonies submitted by the Convention Petitioners amounted to 3 (three) people, each named Happy Endyanti Binti Zenal Supardjo, Bara Satria

Wibawa Bin Bambang Widharto, and Zulaikha Dariati Binti M. Zikri who had family and close ties to the Convention Petitioner. there is a legal prohibition to become witnesses in this case, and the witnesses have been sworn in, they can be formally accepted because they have complied with the military regulations in accordance with Article 144 and Article 147 HIR, while the assessment is considered, then the testimony material will be considered.

The law of proof is legal evidence according to law, the system adopted in proof, the conditions and procedures for submitting the evidence as well as the judge's authority to accept, reject, and evaluate a proof. Where the legal sources of evidence are laws, doctrines or teachings, as well as jurisprudence, with these evidences, they can be used as evidence in order to raise the judge's belief in the truth of a civil act that has been committed by the defendant, so that if a piece of evidence is not If it is found and/or if there is no legal regulation that regulates it, then law enforcement officers will have difficulty in enforcing civil rights for the parties. Article 183 states that evidence must be based on the Criminal Procedure Code, namely valid evidence, and accompanied by the judge's conviction obtained from such evidence. This provision is similar to Article 341 paragraph (4) Ned. Sv which says

"Judges may not impose a civil case on a person, except when with at least two valid pieces of evidence".

From the explanation that has been presented, it can be concluded that the validity of the electronic evidence is based

on the examination of the judge with his suspicion of the similarity of the electronic evidence submitted with the original goods or documents, then the electronic evidence used as evidence at trial must be sufficiently stamped. So that various electronic documents such as photos of Convention Applicants with other women and SMS can be proof of the print out results that are not disputed by the opposing party but because they have not gone through further testing, they will be considered further based on the provisions of Article 5 paragraph (1) and (2) Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE). The thing that needs to be considered by the parties is that related to the validation of electronic evidence submitted to the trial, it must be validated by parties who have special knowledge and expertise that have been certified, so that the electronic evidence can be considered by the panel of judges with full confidence in the existence of electronic evidence. in the judge's decision.

CONCLUSIONS

The conclusion obtained is that based on the provisions of Article 5 paragraphs (1) and (2) of Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE) can be considered as evidence. However, in the decision Number 1528/Pdt.G/2017/PAJT, there is no ISO 27037 digital evidence test and digital signature or digital test encryption required for expert information in the audit trail process that can ascertain whether the evidence is in accordance with the original or has been changed so that

imperfect and strengthen the evidence to be used as a complement to the trial. The promulgation of Law no. 11 of 2008 concerning Electronic Information and Transactions (UU ITE) is considered to provide more legal certainty and wider scope of application in terms of the validity of evidence, Article 5 paragraph (1) of the UU ITE Electronic Information and/or Electronic Documents and/or their printed results are tools valid legal evidence. Electronic Information and/or Electronic Documents and/or their printed results are extensions of valid evidence in accordance with the applicable procedural law in Indonesia. In addition to recognizing electronic information/documents as evidence, the ITE Law also recognizes print outs as legal evidence. The procedure for obtaining electronic information/documents used as evidence in court if it is related to a civil act, then to obtain it must be through the permission of the Head of the local District Court as regulated in Article 43 paragraph (3) of the ITE Law. According to Islamic law, divorce is through online media such as telephone, Facebook, Youtube, SMS, Whatsapp, or Instagram, whether it is only in the form of sound or accompanied by the form of the party communicating in the form of an image (video call). Then according to the Shari'a, the divorce is declared as a valid divorce, even though there is no guardian and it is not delivered directly in front of the wife. According to positive law, it is in line with the provisions in Islamic law which regulates divorce, namely the arrangement in KHI comes from Islamic law. However, the absence of legality in the form of proof of divorce (with no divorce being handed

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