

DIGITALIZATION IN ISLAMIC FAMILY LAW: AN OPPORTUNITY OR A THREAT?

Khaiyyil Faizunan Nurun Nafi

Institut Agama Islam Negeri Kediri, Indonesia.

E-mail: khaiyyil2001@gmail.com*

Kamilatun Nisa'

Institut Agama Islam Negeri Kediri, Indonesia.

E-mail: kamilatunnisa011@gmail.com

Ahmad Taufiqur Rohman

Institut Agama Islam Negeri Kediri, Indonesia.

E-mail: taufiqurr248@gmail.com

Abstract: This study examines how Islamic family law can adapt to the modern era without losing its core values. It also provides recommendations for more adaptive laws in response to contemporary developments. The modern world has undergone many changes in various aspects of life, including Islamic family law, which is governed by Sharia principles. New challenges posed by technology include child custody and personal data protection, divorce through digital platforms, and the validity of online marriage documents. Moreover, the spread of false information on social media can potentially disrupt court proceedings. This study uses normative research to analyze Islamic family law issues in the digital era. The main data sources consist of legal literature, statutory regulations, and official documents related to Islamic family law. Data collection techniques were carried out using literature studies, where researchers looked at and analyzed various relevant articles, scientific works and legal sources. The analysis is carried out by identifying and categorizing the normative challenges that have emerged due to advances in digital technology and assessing how Islamic family law rules adapt to these changes. Islamic family law can adapt to the modern era without losing its core values by following an approach that focuses on two important aspects: flexibility of Islamic legal principles

and contextualized reinterpretation of social changes. Some of the ways to achieve this are the *Maqasid al-Shariah* Approach, *Ijtihad* (Reinterpretation), Fiqh Minority (*Fiqh al-Aqalliyat*), the Role of the State in Legislation and the Enforcement of Human Rights in Islamic Family Law.

Keywords: Digitalization, Islamic family law, Social.

A. Introduction

The advancement of digital technology has brought significant changes to various aspects of life, including legal systems and family governance. Islamic family law, as a major branch of *sharia*, has not been immune to the effects of digitalization, which have influenced social, economic, and legal interactions within Muslim communities. The digital era offers opportunities to enhance access to information and legal services but also presents threats to traditional values and legal certainty. Therefore, it is essential to examine how Islamic family law responds to these changes and whether digitalization should be perceived as an opportunity or a threat (Abidin & Syaqui, 2024).

On one hand, digital technology provides Muslim communities with easier access to legal services related to family matters, such as legal consultations, dispute resolution, or online *fatwas*. Digital platforms, including mobile applications and websites offering *Sharia*-based legal services, are increasingly common, enabling couples to consult with religious scholars or lawyers without needing face-to-face meetings. For example, online fatwa services or digital divorce proceedings have become more widespread in some Islamic countries (Asmar et al., 2023), including Indonesia and Malaysia. These services represent opportunities to help people resolve family issues more quickly and efficiently.

However, the use of digital technology in Islamic family law also introduces specific challenges. One such challenge is the risk of neglecting legitimate legal procedures in the process of digitalization. For instance, online dispute resolution is often deemed inadequate for fully enforcing the principles of *Sharia*, especially in terms of witness verification and document authenticity (Najmuddin et al., 2023). In some countries, digital divorce processes have sparked debates, as they are perceived to overlook the interests of vulnerable parties, such as wives, who may not receive adequate legal protection.

Furthermore, digitalization has altered patterns of communication within Muslim households, potentially creating new issues in marital relationships. Social media and instant messaging apps facilitate cross-

border interactions, which can sometimes lead to increased cases of infidelity or divorce. This poses a threat to the integrity of households, given that Islam places significant emphasis on maintaining family harmony. In this context, Islamic family law needs to adapt regulations to address the impact of technology on family interactions, including the handling of divorce cases or child custody claims involving digital evidence (Ali & Puspita, 2023).

In addition to practical aspects, digitalization also affects the interpretation of Islamic family law. In the digital era, various religious opinions and fatwas concerning family law are widely disseminated through the internet, often confusing the public regarding the authority and validity of these fatwas. The plurality of online fatwas can disrupt legal consensus within Muslim communities, as the variety of global opinions accessed may contradict local traditions. Thus, it is crucial to examine how religious authorities and Islamic legal institutions can maintain control over the dissemination of *fatwas* in the digital space.

Amidst these opportunities and challenges, the role of the state in regulating digital Islamic family law must also be scrutinised. Islamic countries, including Indonesia, have taken steps to modernise their family law systems through digital regulations, such as electronic *sharia* courts and streamlined processes for online marriage and divorce registration. However, these regulations must be carefully designed to ensure that the principles of *sharia* are upheld and not compromised by technological convenience.

The key question in this study is whether the digitalization of Islamic family law presents more opportunities to strengthen legal services and justice or poses a threat to traditional values and legal validity. This research aims to find a balance between modernisation and the preservation of *sharia* values in the digital era. Ultimately, Islamic family law must adapt dynamically to contemporary developments while preserving the essence and principles that serve as the primary guidance for Muslims.

B. Research Methods

This study analyzes issues related to Islamic family law in the digital era using a normative research approach. The primary data sources consist of legal literature, statutory regulations, and official documents relevant to Islamic family law. The data collection technique involves library research, where the researcher examines and analyzes various articles, scholarly works, and relevant legal sources. The analysis is conducted by identifying and categorizing the normative challenges that arise as a result of

technological advancements and evaluating how Islamic family law regulations have adapted to these changes.

C. Results and Discussion

1. Compatibility of Islamic Family Law with Digital Development

In the study of Islamic family law, the role of parents in the lives of their children is of great concern. Parents and children have a special and responsible relationship. In Islam, parents have several rights and obligations, including protecting and educating their children. As parents, they have several rights. Firstly, the right to be obeyed, which obliges children to obey their parents' orders as long as these orders do not contradict Islamic law. Secondly, the right to respect, which obliges children to honour their parents, both in word and action. Third, the right to honour, which obliges children to respect their parents, both in word and action. In Surat al-Luqman verse 14, it is mentioned:

ووصينا الإنسان بوالديه حملة الله وهنا على ومن وفصالة في عامين أن اشكر لي
ولو الديك إلى المصير

We enjoin man (to be kind) to his parents. His mother conceived him in a state of increasing weakness and weaned him in two years. (“Give thanks to Me and your parents. Only to Me will you return”).

Throughout history, the digital era has been marked as a period where digital technology has transformed how we live, work, and interact. Technologies such as computers, the internet, and smart devices have become essential parts of our daily lives. However, as these advancements have evolved gradually and are interconnected, it is difficult to pinpoint exactly when the digital era began. Nonetheless, many experts suggest that the modern digital era commenced in the late 1970s to early 1980s, with the most significant developments occurring during the 1990s.

Given the significant impact of the digital era on our lives, it is essential to understand both its positive and negative effects and prepare ourselves to overcome potential challenges in the future. By harnessing technology wisely, we can build a better future. The digital world is a double-edged sword: it offers numerous benefits to humanity but also introduces risks and threats. With digitalization and automation, work becomes more efficient, people can connect more easily, social relationships are strengthened, and innovations emerge to improve the quality of life.

While the digital era has brought benefits, there are also negative consequences. For instance, dependence on technology can reduce

face-to-face social interaction, while privacy and personal data security become vulnerable to breaches and misuse. Additionally, not everyone has equal access to technology, which can create a digital divide and contribute to the spread of hoaxes or false information (Ari Arkanudin, 2024).

The similarities between Islamic family law and the advancements of the digital era are evident in the shared emphasis on responsibility, protection, and ethics both within family interactions and in the digital world. Key parallels include:

a. Responsibility and Protection

Parents have the responsibility to protect and educate their children, guiding them to uphold Islamic teachings, respect their parents, and behave well in social life. In the digital era, parents are also responsible for protecting their children from online threats, such as cyberbullying and inappropriate content, and safeguarding their privacy and data security.

b. Ethics and Morality

Children are required to respect their parents and conduct themselves with good moral character by Islamic teachings, both in word and deed. Similarly, ethical behaviour in technology use is crucial. Users, including children, must be taught to behave respectfully online, honour others on the internet, and refrain from spreading false information or hoaxes.

c. Compliance with Guidelines

Children must obey their parents' instructions, provided they do not contradict Islamic law. Similarly, compliance with rules governing technology use is essential. Users must adhere to regulations such as data protection laws, copyright rules, and internet ethics.

These parallels highlight that both in family life and the digital realm, responsibility, protection, and ethics are crucial principles for maintaining balance and harmony in interactions.

Digital technology has enhanced public access to Islamic family law. Numerous legal services, including consultation and legal information, are now available online, making it easier for Muslims to obtain advice or rulings related to family law. For example, Islamic legal service apps provide *fatwas*, marriage guidance, divorce procedures, and inheritance rights directly to users. This innovation accelerates consultation processes and extends services to communities that previously had limited access to the (Ansori & Juliansyahzen, 2022).

In some Islamic countries, such as Malaysia, the *e-Syariah* system has been implemented to streamline the administration of Islamic family law. Through this system, case registration, hearings, and even court rulings can be managed digitally. The *e-Syariah* system improves bureaucratic efficiency and makes legal proceedings quicker and more transparent. It also allows for online access to case records, case status tracking, and electronic document submission (Yahya et al., 2012).

The development of digitalization has also transformed how Muslims seek fatwas. In the past, fatwas were obtained through in-person meetings with religious scholars or institutions. Now, digital fatwas are available through official websites or dedicated apps. Countries like Indonesia and Egypt have adopted online fatwa systems, allowing people to ask questions and receive responses on family matters such as marriage, divorce, and inheritance quickly and conveniently. However, this shift poses challenges in ensuring the authenticity and authority of the issued *fatwas* (Islamy et al., 2024).

One positive impact of digitalization is the emergence of Online Dispute Resolution (ODR). In countries such as Indonesia, mediation and arbitration for Islamic family disputes can now be conducted through digital platforms. This is particularly beneficial for parties unable to attend court in person, especially those in remote areas. However, it is important to ensure that these processes remain consistent with Sharia principles, especially in terms of document verification and legal evidence (Conley Tyler & McPherson, 2006).

The digitalization of family law services also presents challenges related to data privacy and security. Family law cases often involve highly sensitive information, such as divorce, child custody, and alimony. Therefore, it is crucial for digital legal systems to ensure that this data is well-protected. Islamic countries implementing *e-Syariah* or digital family law platforms must have strict regulations on personal data protection that align with Islamic values and international standards (Musarrofa & Rohman, 2023).

In summary, digitalization offers significant opportunities for the development of Islamic family law, such as broader accessibility, improved legal processes, and innovative dispute resolution methods. However, there are also challenges, particularly concerning legal authority and the alignment of digital systems with sharia principles. Strengthening the synergy between Islamic family law and digital developments is essential to maximise benefits without compromising the core principles of Islamic law (Ramadhan, 2024).

2. Evaluation of Existing Legal Norms and Their Relevance

Many aspects of life have changed due to advances in information and communication technology, including Islamic family law. Traditional family law conventions, such as marriage, divorce, and child custody, are facing challenges in the digital era. To understand how Islamic family law can adapt, it is essential to evaluate these issues. *Islamic Family Law Challenges in the Computer and Internet Era* (Anwar, 2020).

a. Online Marriage

The development of online marriage platforms has raised new issues concerning the legitimacy and legal recognition of marriages. According to Islamic family law, online marriages may not always involve witnesses and specific procedures. A case involving Fira and Max Walden illustrates how an online marriage contract (*akad nikah*) can overcome physical and geographical barriers. Fira was in Surabaya, Indonesia, while Max was in Sydney, Australia. Without online technology, the geographical distance would have been a significant obstacle to arranging their marriage. However, they successfully held their marriage ceremony via Zoom, enabling them to carry out the marriage as planned without the need for travel or physical meetings.

The Indonesian Council of Ulama (MUI) has issued an online fatwa that explains the legal framework governing this issue. It provides guidance on several key points (Harahap, 2023):

- 1) Requirements for a Valid *Ijab Kabul* (Marriage Agreement).
According to the MUI *fatwa*, an online *ijab kabul* is only valid if it meets the following conditions:
 - a) It must be conducted in a single assembly (*ittihad al-majelis*).
 - b) Clear and explicit wording (*lafadz sharib*) must be used.
 - c) The *ijab* and *kabul* must be carried out directly and continuously (*ittishal*).
- 2) Implementation through Representation (*Taw'kil*): If the groom and the wali (guardian) cannot be physically present in the same location, the fatwa allows the *ijab kabul* to be carried out through representation (*taw'kil*). This reflects a response to situations where the parties cannot meet in person, as seen in the case of Fira and Max.
- 3) Use of Virtual Networks: One essential aspect of the fatwa is the requirement that the groom, the wali, and the two witnesses must be connected via a virtual network with audio and visual

communication. This emphasises the importance of direct and visual interaction during the online marriage process.

- 4) Real-Time Execution: The online marriage must occur in real-time, ensuring that all parties are present and engaged simultaneously to prevent manipulation or illegitimate actions.
- 5) Guarantee of Certainty: It must be ensured that all participants in the marriage ceremony genuinely exist, preventing fraud or fake marriages that could occur online.
- 6) Official Marriage Record: Online marriages must be recorded by an authorised marriage official (*KUA*) to ensure that they are legally recognised.

b. Divorce via Digital Media

The use of social media applications and platforms to announce divorce raises issues concerning evidence and legal procedures. According to several Islamic scholars, divorce not conducted directly is not permitted under Islamic law.

As resolved in the *ijtima'* session of the Indonesian Council of Ulama in Tasikmalaya on 1 July 2012, divorces outside of court proceedings must be reported in court. This means that a divorce is deemed invalid if the presiding judge determines that one of the legitimate grounds for divorce is not fulfilled.

The Islamic Religious Council of Singapore (MUIS) has declared that divorce declarations made via electronic media are unlawful. In Cairo, Egypt, Supreme Court judge Rifyal Ka'bah has expressed opposition to using electronic media for divorce proceedings, including mobile phones. He views telephones as more reliable than emails, SMS texts, faxes, and other methods, as they provide better resource authentication.

His reasoning emphasises the difficulty of ensuring that the individual sending the email, SMS, fax, or other communication is indeed the person involved in the divorce (Kurniawan, 2019).

- c. Personal Data Protection: In the modern era, the risk of privacy breaches and personal data violations can impact family law cases. Islamic law must adapt to new ways of protecting individuals' data.

Indonesia currently lacks specific legislation governing personal data protection. The Personal Data Protection Bill (*RUU PDP*) serves as the government's measure to protect the constitutional rights of Indonesian citizens, as stipulated in the 1945 Constitution. This is specifically mentioned in Article 28(G), Paragraph 1. One of the shortcomings of the *PDP* Bill is its limited focus on children's privacy and the privacy of persons with

disabilities, which makes such information prone to misuse (Suari, 2023).

Despite the challenges in the digital age, Islamic family law remains relevant. In this context, legal adaptation is necessary to ensure that Islamic values are upheld in the face of technological advancements.

- 1) The Importance of Education and Outreach: Islamic family law should be taught more extensively, particularly through digital platforms, to raise awareness and understanding within society.
- 2) Flexible Regulation: Legal regulations should be modified to accommodate new circumstances without compromising the fundamental principles of Islamic law.
- 3) The Use of Technology in Legal Processes: Technology should be integrated into legal procedures, such as online mediation, to resolve disputes more effectively.

In the modern era, Islamic family law faces numerous challenges that require careful attention and adjustment. Existing conventions are still in place but must be reformed to meet the demands of the times. Cooperation among stakeholders, including the government, religious scholars, and society, is essential to creating an effective and functional legal system.

3. Comparison of Family Law Systems in Malaysia and Indonesia in the Digital Context

Technological developments have significantly impacted various aspects of life, including family law systems, which encompass marriage, divorce, child custody, and inheritance distribution. In response to these technological changes, different countries have developed their legal frameworks and regulations. Malaysia and Indonesia are two countries that have structured their family law systems differently.

The digitalization of family law in Malaysia is part of the government's effort to improve accessibility and efficiency in the judicial system. Several measures have been implemented to accelerate legal processes and make it easier for citizens to access legal services online, including matters related to divorce, marriage, and guardianship. Key elements of Malaysia's digitalization of family law include electronic Sharia courts, online marriage ceremonies, online divorce filing, e-filing systems, and online mediation.

Malaysia has implemented *e-Sharia*, a digital system that enables cases to be filed electronically in Sharia courts. These courts handle

various aspects of Islamic family law, including marriage, divorce, and inheritance distribution. This system helps to speed up legal administration and reduce the costs incurred by all parties involved.

During the COVID-19 pandemic, Malaysia introduced online marriage services, allowing Muslim couples to marry virtually without physical attendance. This became a solution for those hindered by travel restrictions or health issues.

In Malaysia, divorce cases under Islamic law can now be filed online, making the process more efficient and expedient. The use of technology in this context also aims to minimise delays that might otherwise occur due to the complex bureaucracy of the judicial system (Effendi, 2020).

Malaysia has also adopted an e-filing system, enabling lawyers and litigants to submit legal documents digitally. This system applies not only to Sharia courts but also to civil courts, ensuring easier access to legal processes for all citizens.

The government encourages the use of online platforms for family dispute mediation, allowing disputing parties to meet with mediators virtually to resolve conflicts without having to attend court.

Despite the benefits of this system, technological accessibility challenges remain, particularly for those living in rural areas or those less familiar with technology. Data privacy protection is also a crucial concern, given the amount of sensitive data involved in family law cases.

The digitalization of family law in Malaysia marks an important step towards a more modern and inclusive judicial system, although improvements in technological infrastructure and public awareness are still needed to promote the use of digital services effectively.

In Indonesia, the digitalization of family law is also advancing to improve accessibility and efficiency in legal services, including marriage, divorce, child custody, and shared property distribution. Several initiatives have been implemented to strengthen digitalization in family law, including:

a. Electronic Courts (E-Court)

E-Court is a service for registered users that allows the online registration of cases, access to case cost estimates online, payment via online channels, electronic summons, and virtual hearings. This service enables citizens to file divorce, asset distribution, and child custody cases online without needing to visit the court in person. Through E-Court, parties can submit legal documents electronically, which helps expedite legal administration processes

and reduce costs (Supreme Court of the Republic of Indonesia, 2024).

b. Online Hearings (E-Litigation)

In addition to E-Court, the Supreme Court has developed an E-Litigation system that allows hearings to be conducted online. This feature has proven particularly beneficial during the COVID-19 pandemic, when many hearings had to take place remotely. It offers greater flexibility for parties involved in family law disputes, whether in general courts or religious courts (Pakarti, 2023).

c. Marriage Management Information System (*Simkah*)

The Ministry of Religious Affairs in Indonesia has developed the Marriage Management Information System (*Simkah*), which facilitates the online registration of marriages. The system aims to ease the process for couples registering their marriage and integrates marriage administration data nationally. Through Simkah, couples can check the status of their documents and monitor their wedding schedules digitally.

d. Data Integration and Digital Certification

To strengthen institutional integration, the Indonesian government plans to develop digital certification for marriage and divorce processes, enabling access to legal documents such as marriage and divorce certificates online. This initiative is expected to accelerate document verification and reduce the risk of forgery.

While family law digitalization in Indonesia offers many benefits, several challenges remain, such as unequal internet access—particularly in rural areas and low digital literacy among the public. Data privacy is another critical concern to ensure the security of sensitive information in digital platforms.

The digitalization of family law in Indonesia is part of broader legal reforms aimed at ensuring justice is accessible to all citizens more easily and efficiently. However, these policies still require improvement to ensure inclusivity and security in their implementation.

Comparative Overview of Islamic Family Law in Malaysia and Indonesia. Both Malaysia and Indonesia share a foundation in Islamic family law, but differences emerge in their implementation—especially in the digital context. In Malaysia, Islamic family law is more centralised, with individual states implementing laws under a federal legal framework. Malaysia has operated its e-Syariah system since 2005, allowing for the digitalization of legal proceedings in Sharia courts, including divorce cases, asset distribution, and alimony claims. In contrast, Indonesia's Islamic family law is governed by the

Compilation of Islamic Law and managed under the jurisdiction of religious courts. The digitalization of religious courts is relatively new and limited to specific areas, unlike Malaysia's more mature system.

Malaysia has successfully developed the e-Syariah system with a more mature infrastructure compared to Indonesia. The e-Syariah system in Malaysia covers online document submission, case registration, and reporting, making it easier for the public to access legal services. It provides significant convenience, especially for couples who wish to resolve disputes efficiently and quickly. Meanwhile, Indonesia has introduced digitalization through the e-court system, which allows for online case registration in religious courts. However, its implementation remains limited to certain regions and is not as comprehensive as in Malaysia.

The positive impact of digital systems in both countries is the improvement of accessibility to Islamic legal services. In Malaysia, the e-Syariah system has reduced bureaucratic obstacles that often hinder couples involved in family disputes. Case handling times have decreased thanks to online document submission and virtual hearings. In Indonesia, the e-court system is also beginning to show potential for expediting legal processes, although its infrastructure is not yet as advanced as Malaysia's. Digitalization helps the public save both time and money.

Both countries face challenges in ensuring that Sharia principles are upheld in their digital legal systems. Malaysia's e-Syariah system aims to balance technological advances with adherence to Sharia rules, incorporating features such as digital witness verification and online document authentication. In contrast, Indonesia's religious courts encounter challenges in verifying digital evidence, such as social media conversations used as evidence in divorce cases. Both countries need to develop better legal frameworks to validate digital evidence and ensure the fairness of legal proceedings by Sharia principles.

On a positive note, the digital systems in Malaysia and Indonesia open opportunities for expanding online fatwa services and virtual Sharia consultations. In Malaysia, online fatwa services have been well established through the official portal of the National Fatwa Council, providing legal advice to the public. In Indonesia, although online fatwa services are not yet centralised, several Islamic institutions, such as the Indonesian Ulema Council (*MUI*) and religious courts, have begun using digital platforms to provide legal guidance. This development enables Muslims in both countries to obtain legal advice quickly without needing to visit religious offices in person.

Although Malaysia has a more structured system for the digitalization of Islamic family law, Indonesia is making progress in the same direction. The positive aspects of digitalization include increased efficiency, accessibility, and transparency within the legal system, allowing the public to access better services. However, challenges remain in ensuring that Sharia principles are adhered to, particularly in terms of digital evidence verification and the implementation of online rulings.

D. Conclusion

The digitalization of family law represents a significant step towards modernising the legal system, offering substantial benefits to society. Through digital technology, legal processes such as marriage, divorce, and child custody can be carried out more quickly, efficiently, and affordably. In countries like Malaysia and Indonesia, the implementation of electronic courts and online legal services has shown great potential in reducing bureaucracy and improving accessibility to legal services, especially for communities located far from legal centres.

However, despite these advances, several challenges remain. Digital divides continue to affect access to legal services in remote areas, and low digital literacy among certain segments of society further complicates the situation. Additionally, privacy and data security are major concerns, as sensitive personal data are involved in many family law cases. Without adequate protection, digitalization could introduce new risks that could harm the parties involved.

To develop a better family law system in the digital age, a holistic and inclusive approach is necessary. Alongside efforts to strengthen technological infrastructure, it is crucial to improve digital literacy among the public and establish clear regulations on personal data protection. When properly implemented, digitalization can become a powerful tool for ensuring justice and accessibility in family law while upholding ethical values and fairness within the framework of Islamic law.

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